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Th10a



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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO HEARING

Application numberA-3-MCO-04-064

Applicant.....California Department of Parks & Recreation, Monterey District, Attn: Tom Moss

AppellantsFriends of the Big Sur Coast & Joseph P. Schoendorf, Attn: John Briscoe, Stoel Rives LLP

Local governmentMonterey County (PLN030620)

Local decisionBoard of Supervisors Resolution 04-326: approved with conditions on September 28, 2004, and received by Central Coast District office of Coastal Commission on October 19, 2004.

Project locationJulia Pfeiffer-Burns State Park (Highway One), Big Sur Coast Planning Area, Monterey County (APNs 420-021-007, 420-021-022, 420-021-033, 420-021-034, 420-021-020, 420-011-027, 420-221-013, 420-221-020).

Project descriptionWaterfall House Landscape Maintenance Project consisting of removing 4,516 exotic plants (trees and shrubs) and replacing them with native plants near environmentally sensitive habitat areas (ESHA) and on slopes exceeding 30%.

File documents.....Monterey County Certified Local Coastal Program (LCP); Final Local Action Notice (FLAN) for local permit PLN030620.

Staff recommendation ...**Substantial Issue; Approval with Conditions**

Summary

On September 28, 2004, the Monterey County Board of Supervisors approved a Coastal Development Permit (CDP) for the Waterfall House Landscape Maintenance Project consisting of the removal of 4,516 non-native plants (including blue gum eucalyptus, Victoria box, and Bailey acacia) near environmentally sensitive habitat and on slopes exceeding 30% at Julia Pfeiffer-Burns State Park (JPBSP) in the Big Sur Coast Planning Area. The County approval occurred after a portion of the work on the project had already been completed.

The project is located in an approximately 35-acre area on both the west and east sides of Highway 1 at the site of the former Waterfall House and South Garden above McWay Cove. The project involves the



California Coastal Commission

November 2006 Meeting in San Diego

Staff: Katie Morange Approved by:

removal of non-native, invasive plants that have spread from original landscape plantings at the site and are threatening the native plant community. With the exception of 241 trees and shrubs that were planted by the original owners in the 1920s through the 1940s or are otherwise protected as “landmark trees,” all exotic vegetation is proposed to be eradicated on the project site, amounting to 4,516 trees and shrubs, ranging in size from 0.1 to 23.5 inches in diameter at breast height (dbh). Of this total, 262 trees and shrubs are 12 inches or greater in dbh.

An appeal submitted by Friends of the Big Sur Coast & Joseph P. Schoendorf raises issues concerning long-term maintenance of environmentally sensitive habitat (ESHA). The proposed project is consistent with a number of LCP policies that avoid ESHA and encourage eradication of exotic species and restoration of the native landscape. However, the County’s approval raises inconsistencies with regard to protection of Smith’s blue butterfly, a federally-endangered species, because it does not provide sufficient details regarding monitoring, reporting, and long-term maintenance of restored areas of seacliff buckwheat, the Smith’s blue butterfly host plant. Similarly, the project as approved by the County is not fully consistent with LCP policies that require protection of intertidal habitats from sedimentation because removal of previously-felled vegetation on the slopes above McWay Cove and future non-native vegetation removal proposed along the coastal bluffs in the project area could result in erosion and subsequent sedimentation impacts to intertidal and nearshore habitats. Staff recommends that the Commission find that a **substantial issue** exists with respect to this project’s conformance with the certified Monterey County Local Coastal Program (LCP) and take jurisdiction over the coastal development permit for the project.

Since the appeal, and in response to concerns voiced by the Coastal Commission regarding the adequacy of the proposed Waterfall House Landscape Maintenance Project Resource Management Plan (RMP), the applicants prepared a Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan dated August 8, 2006 that augments the RMP and strengthens implementation of the County’s conditions of approval. The Restoration and Mitigation Plan amply describes the restoration objectives and methods to be employed throughout the remainder of the project and addresses long-term maintenance and monitoring once the removal of non-native plants is complete.

Staff therefore recommends that the Commission **approve with conditions** a CDP for the project that requires implementation of the Restoration and Mitigation Plan in order to ensure that the project adequately protects and ensures the long-term maintenance and viability of ESHA. The County conditions related to protection of riparian habitat, nesting birds, protection of existing seacliff buckwheat plants, and erosion control are retained through the permit conditions. Thus, only as conditioned can the project be found consistent with the LCP.



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Table 1: Summary of Appeal Contentions

List of Exhibits

Exhibit	Title
Exhibit 1	Location Map
Exhibit 2	Project Site
Exhibit 3	Vegetation Treatment Areas
Exhibit 4	Monterey County Final Local Action Notice (includes Findings and Conditions of Approval)
Exhibit 5	Friends of the Big Sur Coast & Joseph P. Schoendorf Appeal Contentions
Exhibit 6	Project Status Report (dated March 16, 2005)
Exhibit 7	Aerial Photo of Site
Exhibit 8	Applicant photo of felled trees on slopes above McWay Cove (April 2006)
Exhibit 9	Applicant photos of Waterfall House site
Exhibit 10	Applicant photos of view of McWay Falls from Overlook Trail



1. Appeal of Monterey County Decision

A. Monterey County Action

On May 12, 2004, the Monterey County Planning Commission approved a Coastal Development Permit (CDP) for the Waterfall House Landscape Maintenance Project consisting of the removal of 4,516 non-native plants (including blue gum eucalyptus, Victoria box, and Bailey acacia) near environmentally sensitive habitat and on slopes exceeding 30% at Julia Pfeiffer-Burns State Park (JPBSP) in the Big Sur Coast Planning Area (Application # PLN030620, Resolution # 04-019). The Planning Commission approval occurred after a portion of the work on the project had already been completed, based on an initial determination by the County that a coastal development permit was not required. On May 28, 2004, Joseph P. Schoendorf and Friends of the Big Sur Coast filed an appeal of the Planning Commission decision to the County Board of Supervisors, and the Board of Supervisors voted to approve the project on September 28, 2004 subject to revised findings and conditions. The County also approved a Mitigated Negative Declaration (of no significant environmental impacts) under the California Environmental Quality Act. Notice of the Board of Supervisor's action on the CDP was received in the Coastal Commission's Central Coast District Office on October 19, 2004. The Coastal Commission's ten-working day appeal period for this action began on October 20, 2004 and concluded at 5pm on November 2, 2004. One valid appeal was received during the appeal period from Friends of the Big Sur Coast and Mr. Joseph P. Schoendorf, on the basis that, among other things, the project does not conform to LCP requirements for protection of environmentally sensitive habitat areas, and is inconsistent with certain procedural requirements.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the sea and the first public road, within 300 feet of the inland extent of the beach, and within 300 feet of the top of the seaward face of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified



local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a de novo review of this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

C. Summary of Appellants’ Contentions

Please see Exhibit 5 for the Appellant’s complete appeal document. The appellants have submitted five pages of written text of general allegations of project inconsistencies with LCP policies and permitting requirements. In a few cases the appellants allege that the project is inconsistent with a specific LCP policy. However, in most cases the appellants have not cited specific LCP policies to support the allegations. Thus, the following findings attempt to cite policies that appear most relevant to the appellants’ concerns. The appellants’ contentions generally fall into two categories: impacts to environmentally sensitive habitat areas (ESHAs) and procedural issues. The specific appeal contentions are summarized and paraphrased in the following Table 1.

Table 1: Summary of Appeal Contentions

Topic	Appeal Contention
<i>ESHA</i>	
	State Parks cut down thousands of trees (358 Eucalyptus, 1,630 Pittosporums, 86 acacias), tossed them over the cliff, taking out endangered species habitat, casting debris on slopes and in surf zone.
	Raptor nest surveys were not performed before trees were cut, and the work buffer imposed by the County is inadequate.
	<p><u>Seacliff buckwheat/Smith’s blue butterfly (SBB):</u></p> <ul style="list-style-type: none"> • No surveys of individual seacliff buckwheat plants for evidence of any SBB live phases. • Seacliff buckwheat is present in existing and proposed tree removal areas, and “buckwheat plants and other native vegetation were severely impacted or eliminated entirely in downslope areas.”



	<ul style="list-style-type: none"> • The buckwheat plants that were observed in project vicinity were/are mature, robust plants expected to provide food and life support for SBB. • Even though no SBB observed in association with buckwheat at site, “small numbers of butterflies may utilize these plants.” • USFWS was not consulted about possible presence of federally-listed endangered SBB or the eradication of its habitat • Removal of existing seacliff buckwheat that may contain any life stages of SBB is a significant and unavoidable impact and violation of Endangered Species Act. • The planting of seacliff buckwheat (proposed as mitigation) takes years to mature into SBB host plant.
	<p><u>Monarch Butterflies:</u></p> <ul style="list-style-type: none"> • Review of trees for roosting sites of monarch butterflies was inadequate, or not done at all. The limited surveys that were done were at the wrong time of year and after many of the potential roosting trees had been removed. • Tree cutting began notwithstanding that Monarchs use of JPBSP as an overwintering site has previously been documented by several biologists during the past 20 years.
	<p><u>Nearshore/Intertidal/water quality:</u></p> <ul style="list-style-type: none"> • No analysis of the impacts to the intertidal and nearshore zones has been done even though trees have been observed in those areas and it is highly likely that additional trees will reach those areas. • Plant toxins given off by Eucalyptus foliage could adversely affect beach and intertidal organisms. • Sediment from downslope movement of logs and erosion of the steep cliff has and will continue to affect water quality and can have adverse effects on intertidal organisms. • Removing large Eucalyptus logs and other non-native debris from the cliff walls is a serious impact that has not been adequately addressed and is not mitigated.



	<ul style="list-style-type: none"> • There is no discussion of listed and unlisted shorebird and marine species that could be impacted by logs on the beach or within the 1,400-acre Underwater Park.
	<p><u>Revegetation:</u></p> <ul style="list-style-type: none"> • Logs and vegetative debris appear to have removed all understory vegetation in some areas, and debris piles will take decades to break down, preventing manual revegetation or natural re-colonization of native plant species over extensive areas of the site. • County has understated slope vegetation impacts and not required any detailed revegetation plans that would normally include methods, species type, numbers, spacing, monitoring and maintenance, and performance expectations.
<i>Procedural</i>	
	State Parks self-determined that it was exempt from any permitting requirements for cutting down over 4,000 trees and shrubs.
	State Parks cut down thousands of trees and damaged the environment without a permit.
	The County took no enforcement action, approved an after-the-fact permit, and waived any fees. Then, on appeal, County ordered State Parks to pay double fees and prepare a restoration plan. However, after meeting with State Parks, the County reversed itself, reducing the fees, waiving the plan requirement, and permitting past and future work.
	State Parks received preferential treatment. The project has not met same exacting standards that other private applicants would be subjected to for same work.
	The project description for the proposed work was inaccurate, affecting the public's and decision makers' abilities to assess the project.
	The County ignored need for more mitigation measures or the existence of significant unmitigable impacts.
	Mitigation measures included in the project do not reduce its effects to a point where no significant effect on the environment would occur.
	Proper analysis to ensure consistency with Monterey County LCP ESHA requirements has not been conducted, and the proper analysis is still not being conducted.



	The project should not have been approved on a mitigated negative declaration because of too many potential impacts. An EIR should have been prepared because the record supports a fair argument that the project has had a significant effect on the environment.
	Project reports do not have the information normally required for non-government projects, such as qualifications of investigators, dates of surveys, and background information on species of concern.
	The LCP requires all biological surveys to be prepared by qualified biologist from County-approved list. State Parks' own staff (not on County list of approved biologists) prepared biological survey and other project plans.
	The Biological Assessment prepared by State Parks indicates 24 strongly suspected or confirmed sensitive animal species at JPBS, but 20 of the 24 species receive no discussion by State Parks.

The appellants request that Coastal Commission change conditions to include enforcement action, impose fees and fines, and require full restoration and proper environmental planning and review before any further work.

2. Staff Recommendation on Substantial Issue

MOTION: *I move that the Commission determine that Appeal No. A-3-MCO-04-064 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-04-064 presents a substantial issue with respect to some of the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

3. Staff Recommendation on De Novo Permit



The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3-MCO-04-064 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT: The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the Monterey County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

4. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.



B. Special Conditions

- 1. Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan.** THROUGHOUT THE REMAINDER OF THE PROJECT, AND AS PRESCRIBED AFTER COMPLETION OF THE PROJECT, the applicant shall implement all components of the Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan (dated August 8, 2006). Implementation of this plan shall occur in conjunction with and in addition to the Waterfall House Landscape Maintenance Project Resource Management Plan dated December 4, 2003, and the Waterfall House Landscape Maintenance Project Erosion Control Plan dated December 5, 2003. As described in the plan, the applicant is required to submit restoration reports for Executive Director review and approval on an annual basis until the minimum standards have been achieved. At a minimum, qualitative measurements shall record plant mortality, plant vigor, and the general amount of exotic vegetation. If the reports identify a failure to meet any of the performance standards identified in the plan, or failure to meet any other standards consistent with current professional habitat restoration standards, the reports shall identify the remedial actions that will be implemented in order to fulfill the plan's performance standards.

The Permittee shall undertake development in accordance with the Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 2. USFWS Review and Approval.** PRIOR TO ISSUANCE OF PERMIT, the Permittee shall submit to the Executive Director evidence that the United States Fish & Wildlife Service (USFWS) has reviewed the project for potential impacts to federally-listed invertebrates, mammals, and birds in the area and provided approval, or a statement that no review or approval is required.
- 3. County Conditions.** Conditions 4 through 10 of Monterey County Resolution 04-326 become conditions of this permit. All other conditions of Monterey County's approval pursuant to planning authority other than the Coastal Act continue to apply except Condition 2 which is superseded by this approval.

5. Substantial Issue Findings

A. Environmentally Sensitive Habitat Areas (ESHA)

1. Applicable Policies

The Appellants contend that the proposed project does not conform to LCP policies designed to protect rare, threatened or endangered species, and/or environmentally sensitive habitat areas, and that the removal of non-native vegetation along coastal bluffs and cliffs in the project area has impacted and will



continue to impact sensitive species and their habitats. The appellants are specifically concerned that the removal of non-native vegetation along coastal bluffs and cliffs in the project area has adversely affected ESHA, including Smith's blue butterfly habitat, Monarch butterfly habitat, raptor nests, and intertidal and nearshore habitat of the Monterey Bay National Marine Sanctuary, and that the County's approval for completion of the project does not adequately address continued impacts to these coastal resources.

The Big Sur Coast LCP requires that "all practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats" (Big Sur LUP Key ESHA Policy 3.3.1). Policy 3.3.3.A.10 states that "Monterey County encourages...public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants..." such as (among others) eucalyptus, pampas grass and other non-native invasive species, providing such removal does not increase potential erosion problems. The LCP also requires that all tree removal be in keeping with the broad resource protection objectives of the LUP, and no vegetation removal shall be permitted in ESHA if it results in any potential disruption of habitat value (LUP Policies 3.5.2.2 and 3.3.2.1). Development with the potential to impact ESHA is also required to include measures to reduce impacts to an insignificant level and assure the habitat's long-term maintenance (CIP Section 20.145.040.B.4). These LCP provisions are cited in full on pages 24-25 of this report.

2. Analysis of Consistency with Applicable Policies

As detailed below, although the project intends to restore the native landscape at the project site (consistent with LCP policies that encourage restoration of the native landscape), a **substantial issue** is raised due to the fact that the Waterfall House Landscape Maintenance Plan Resource Management Plan (RMP; prepared April 5, 2002 and updated December 4, 2003), as approved by the County, does not provide sufficient detail for restoration and long-term monitoring and maintenance to fully ensure success of the project and protection of ESHA in the project area.

The Big Sur LCP identifies riparian corridors, rare and endangered species habitat, Monarch butterfly mass over-wintering sites, and all tideland portions of the California Sea Otter State Fish and Game Refuge as ESHA. The LCP requires that all development, including vegetation removal, shall be prohibited in ESHA if it has been determined through a biological survey that impacts cannot be reduced to a level at which the long-term maintenance of the habitat is assured.

Raptor Nesting

The appeal contends that raptor nest surveys were not prepared prior to previously completed tree removal activities, and that the work buffer imposed by the County is inadequate. Failure to perform such surveys would be considered inconsistent with the LCP, which requires the protection of habitat that supports rare and endangered species. Both the RMP and Biological Assessment (prepared by State Parks on May 15, 2003) state that no bird species of special concern have been observed nesting in the area. According to the biological assessment, State Parks conducted terrestrial bird observations in spring and summer of 2002, prior to and during vegetation removal activities.



The Biological Assessment states that only one bird species of special concern, black swift, has been observed in the project area and the last observed nesting of this species was in the 1970s on the cliff next to the waterfall. The RMP states that special precautions will be taken to ensure that no nesting birds, regardless of protection status, are impacted during all exotic tree and shrub removal. As part of the project, a State Parks ecologist will inspect trees for bird nesting prior to removal, and if any nest or nesting activity is observed, the tree(s) will be retained until the young have fledged and left the nest. At the recommendation of the California Department of Fish and Game after their review of the Biological Assessment, the County added an additional measure that requires a 150-foot buffer zone around trees with known active nests. This buffer zone is commonly used to protect nesting birds in the absence of specific information to the contrary. As such, the project is consistent with the LCP with respect to nesting birds, and no substantial issue is raised.

Monarch Butterfly Habitat

Previously completed non-native vegetation removal associated with the project included the removal of large Eucalyptus tree stands, which are considered by the LCP as ESHA if they are used by Monarch butterflies as overwintering sites. The appeal contends that Monarch butterfly surveys were inadequate, and done at the wrong time of year, after many of the potential roosting trees had been removed. According to the Biological Assessment, documented surveys for Monarchs have been performed in JPBS since at least 1982. Prior to 1984, Monarchs clustered some years in a grove of eucalyptus trees located next to the state park employee residence in McWay Canyon. This grove was removed in 1984, and since that time, no Monarch clustering has been observed in the park. The Biological Assessment states that, according to Monarch butterfly expert Walter Sakai, the Eucalyptus groves surrounding McWay Cove are too exposed to support a Monarch overwintering site. Based on surveys completed in the 1980s through the early 2000s by the Ventana Wilderness Society, no Monarch butterflies have been observed clustering or overwintering in the project area.

Furthermore, a letter report prepared by Dr. Richard Arnold of Entomological Consulting Services, Ltd. (dated November 11, 2003)¹ states that Monarch overwintering sites must provide wind protected roost locations with buffered temperatures, relatively high humidity, and filtered sunlight through the fall and winter months. Ideal roost locations are also surrounded by other trees that provide both wind protection and ameliorate microclimatic conditions. The contention that surveys were done at the wrong time of year to detect the presence of Monarchs is true. Dr. Arnold's surveys occurred during July and August; as such, it was too early to detect any Monarch clusters. However, he evaluated the suitability of habitat within the 35-acre project area to serve as overwintering habitat. The surveys found that although the stand of Eucalyptus that was removed at McWay Cove was dense, the trees were situated at

¹ Since the County originally had told State Parks that no permit was required, no biological reports were submitted prior to work conducted in July, August and September of 2002. However, once the County determined that a permit was necessary due to work on slopes over 30% and within 100 feet of mapped ESHA, State Parks employed Richard A. Arnold, of Entomological Consulting Services Ltd, an expert on sensitive butterfly species, to conduct habitat assessments and presence/absence surveys for Smith's blue butterflies and to evaluate the suitability of existing habitat for Monarch Butterfly overwintering sites. The resulting biological letter report, submitted to State Parks, dated November 11, 2003, and incorporated into the updated Resource Management Plan dated December 2003.



the coastal bluff with no protection from topography or other vegetation, and due to the exposure of these trees, it is unlikely that Monarchs used them as overwintering roosts.

Finding 2 of the County's FLAN states that, as conditioned, the project is consistent with applicable plans and policies, and that "...although Eucalyptus trees.... themselves are not protected, they provide habitat for Monarch butterflies...Proposed removal of exotics and revegetation with native plants will enhance the natural conditions for this area." Findings 5.c.1 and 9, in discussing the Arnold report, state that he concludes it is unlikely that Monarchs used the trees felled in September 2002 because of their exposed location on the coastal bluff.

Based on Commission staff biologist review and evaluation of the County's record, the project, as proposed and conditioned by the Monterey County Board of Supervisors, will not adversely affect Monarch butterfly habitat. No evidence has been provided to show that Monarchs use or have used the Eucalyptus stand previously felled, or other non-native vegetation proposed for removal under the project. Furthermore, no evidence exists to indicate that Monarch butterflies have ever been observed clustering or overwintering in the project area. Finally, an assessment of the project area by a professional entomologist concludes that the eucalyptus grove to be removed by the project is unlikely to provide overwintering habitat. For these reasons, no substantial issue is raised with respect to Monarch butterfly overwintering habitat.

Smith's Blue Butterfly

The appeal also addresses another butterfly species, the federally-endangered Smith's blue butterfly. Smith's blue butterflies rely solely on seacliff buckwheat plants for their entire life cycle, and removal of these plants is considered inconsistent with LCP requirements because it constitutes disruption of endangered species habitat. Based on staff review and evaluation of the County's record (including the 2003 report prepared by Entomological Consulting Service, Ltd.), project activities that have occurred to date have not adversely affected Smith's blue butterfly habitat. No evidence exists in the record to support the contention that " buckwheat plants...were severely impacted or eliminated entirely in downslope areas." As described in greater detail in the de novo findings, the record indicates that Smith's blue butterflies are absent at the site due to the poor quality of its habitat and limited biomass of seacliff buckwheat. The appeal also contends that the U.S. Fish and Wildlife Service (USFWS) was not consulted about possible presence of this federally endangered species or its habitat eradication. Multi-year field investigations, historical surveys, review of literature, and personal communication with biologists familiar with the area led State Parks staff to determine that a lack of suitable breeding habitat for Smith's blue butterfly existed at the site, and therefore, USFWS consultation was not necessary.

However, the Arnold report states that while no Smith's blue butterfly life stages were observed, small numbers of the butterfly may utilize the few existing plants on site. As a result, the County conditioned the project to require identification and protection of existing buckwheat plants before Phase II of the project begins. However, the LCP requires measures to assure the habitat's long-term maintenance, and although the project intends to include native seacliff buckwheat plants as part of the restoration component of the project, the restoration plan required by the County (which includes the RMP and a



monitoring program, dated May 3, 2004) does not provide adequate details for ongoing site maintenance to protect and enhance Smith's blue butterfly habitat. As such, the County's approval raises a substantial issue with regard to Smith's blue butterfly.

Nearshore and Intertidal Habitats

Portions of the project area are located on coastal bluffs in close proximity to the marine environment. As a result of tree cutting activities that occurred prior to issuance of the County permit, a number of trees were cut and dropped onto the steep slopes above McWay Cove, resulting in the potential for erosion and other subsequent impacts to marine ESHA. The appellants contend that the felled vegetation on the slopes above McWay Cove is likely to reach the intertidal and nearshore zones where it would impact habitat and water quality. Specifically, the contentions state that plant toxins from Eucalyptus foliage could adversely affect intertidal and nearshore organisms; sediment from downslope movement of logs and erosion of steep cliffs has and will continue to affect water quality and intertidal organisms; and no analysis of these impacts has been completed. The Big Sur LCP calls for development adjacent to intertidal habitat areas to be sited and designed to prevent deposition of sediment into the habitat. Removal of the downed vegetation on the slopes, as required by the County approval, could result in erosion and subsequent sedimentation of the intertidal and nearshore zones at McWay Cove. In addition, future non-native vegetation removal proposed along the coastal bluffs in the project area could also result in impacts to the marine habitat. These impacts are not adequately addressed by the RMP or the County's approval. Thus, a substantial issue is raised with respect to protection of intertidal and nearshore ESHA.

Revegetation

The LCP requires all tree removal be in keeping with the broad resource protection objectives of the LUP, and practical efforts be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The appeal contends that project activities to date have removed all understory vegetation in some areas, and remaining vegetative debris piles will prevent manual revegetation or natural recolonization of native plants. It is correct that logs and vegetative debris have smothered understory vegetation in some areas, but extensive revegetation has already occurred over most of the site. In accordance with the RMP, following removal of non-native vegetation, the site was replanted with a variety of native plant species representative of the native coastal scrub plant community. In addition, according to the applicant, the removal of Eucalyptus and other non-native plants allowed for recovery of native plants that had been shaded out or outcompeted by the invasive plants, and most areas have made a full recovery. In particular, according to State Parks and as shown in Exhibit 8, the area where the trees now lay on the slope on the north side of McWay Cove has become overgrown with native vegetation, as was anticipated in the RMP, and once the downed trees are allowed to be removed, the area should fully and rapidly recover.

The appeal also contends that the County did not require any detailed revegetation plans that would normally include methods, species type, numbers, spacing, monitoring and maintenance, and performance expectations. One of the primary goals of the project is revegetation of the native plant community at the site, and as such, the restoration plan as required by the County describes general



revegetation methods and monitoring protocols. However, as described above, the plan does not provide adequate details for the types and numbers of plants and plant communities to be restored, ongoing site maintenance, and performance standards to ensure success of site revegetation. As such, the County's approval raises a substantial issue with regard to revegetation and enhancement of ESHA.

3. Substantial Issue Conclusion

The intent of the approved project is eradication of non-native, invasive plant species and restoration of the native landscape within a portion of JPBS. As approved and conditioned by the County, the project is, for the most part, consistent with LCP policies requiring avoidance and protection of ESHA. However, vegetation removal and restoration work raises potential LCP inconsistencies with regard to long-term viability of certain ESHAs on the project site, namely Smith's blue butterfly habitat and nearshore and intertidal habitat. County conditions for restoration and erosion control do not provide full assurances that the project will provide maximum protection of coastal resources as required by the LCP. Thus, the appeals raise a substantial issue with respect to consistency with the certified LCP.

See the De Novo ESHA findings, incorporated herein by reference, for more detail.

B. Procedural Issues

1. Applicable Policies

Procedural contentions assert that State Parks and the County did not follow standard environmental review and permitting procedures and that State Parks was granted preferential treatment by the County because they are a public agency. Specific contentions made in this regard are summarized and paraphrased above in Table 1. Most of these procedural contentions are not directly related to LCP requirements and, as such, are not applicable to the Commission's review. However, certain contentions are relevant to LCP coastal development permit and biological report requirements. Under CIP Section 20.145.060.A.1, a coastal development permit (CDP) is not required for the removal of non-native or planted trees unless it would result in the exposure of structures in the critical viewshed, or if the trees are determined to be landmark trees (e.g., those over 24" dbh, visually significant, historically significant, or over 1,000 years old). However, CIP Section 20.17.030 states that regardless of use category, a CDP is required for development that will cause a significant impact, or development that will occur on slopes of 30% or greater. With regard to biological reports, Big Sur LUP Policy 3.3.2.2 states that where "...development is proposed in documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals or agencies shall be made to determine precise locations of the habitat and to recommend mitigating measures to ensure its protection."

2. Analysis of Consistency with Applicable Policies

Permitting



State Parks began the project in late summer of 2002 with the understanding that a CDP was not required, based on their reading of CIP Section 20.145.060.A.1 and discussions with County staff. Work was halted in October 2002 after the County determined that a CDP was in fact required since work was being done on slopes of 30% or more and within 100 feet of mapped or field identified environmentally sensitive habitats (as required by CIP Section 20.17.030). While it is correct that County staff determined that a permit was required after the applicants had already completed about half of the work, State Parks immediately halted work once notified by the County, and began working with County staff to file an application for the project. An application for the project was filed on December 5, 2003, and the County completed an Initial Study on May 4, 2004.

As is the common approach to resolving such issues, County approval of the permit application, with conditions to ensure consistency with LCP requirements, was required in order to resolve after-the-fact development. Thus, the County took the appropriate steps in resolving the issue, and did so in the same manner that they use for other after-the-fact development that occurs in their jurisdiction. The contention that State Parks “self-determined” that it was exempt from any permitting requirements has no bearing on the final County action because ultimately, State Parks applied for and received a CDP (consistent with LCP requirements) for the project after they were so advised. As such, no substantial issue is raised.

Enforcement Action, Fees, and Restoration Plan

The appellants contend that, on appeal, the County Board of Supervisors initially ordered State Parks to pay double fees, and then reversed itself by reducing the fees. It is correct that Condition 11 of the County Board of Supervisors staff report recommended that State Parks pay \$18,463.76 in permit fees for the project. However, the final Condition 11 of the Board’s resolution to approve the project required a fee amount of \$9,231.88. The County exercised their discretion to charge the applicant a fee, since they are not required to do under the Fee Waiver Policy (adopted by the Board of Supervisors on August 29, 2000, and not part of the LCP) which states that the Director of Planning and Building Inspection may waive application and appeal fees for discretionary permit and building permit applications for government agencies. The County’s final action states that although State agencies can be exempted from County fees, the applicant was charged a fee as a result of commencing work without a permit. Furthermore, the County’s fee structure is not part of the LCP, and the contention does not materially affect the substance of the project. As such, no substantial issue is raised by this contention.

The appeal also states that the County took no enforcement action and did not impose any fines on the applicant. Similar to permitting fees, the LCP does not include a specific structure for fines. As discussed above, the County resolved the violation through issuance of a CDP with conditions to ensure consistency with LCP requirements, and a one-time fee was charged as a result of commencing work without a permit.

The appeal also contends that the County waived the requirement for a restoration plan. However, Condition 8 of the County approval requires the applicant to restore and re-vegetate disturbed areas of the site in accordance with the existing RMP and Monitoring Program. No evidence exists in the County’s action that suggests that the requirement for restoration was waived after this condition was



imposed.

The appeal requests that the Commission change project conditions to include enforcement action, impose fees and fines on State Parks, and require full restoration and proper environmental planning and review before any further work on the project. The Commission has no authority to impose fines for violations of the Coastal Act or an LCP; only a court can order such monetary penalties. Similarly, the Coastal Commission does not impose fees for appeals, and does not have any authority to require an applicant to pay fees or fines to a local jurisdiction. Environmental planning and review under the LCP is being conducted by the Commission in this substantial issue and de novo analyses and, as a result of the substantial ESHA issue findings above, the conditions of this de novo staff report will ensure full restoration consistent with the LCP. If for some reason the Commission denies the after-the-fact portion of the permit or State Parks fails to comply with conditions of approval, then an enforcement action can be commenced by the County, and, if necessary, by the Coastal Commission.

CEQA and Mitigation

The appellants generally contend that the mitigation imposed to reduce impacts of the project is inadequate and the project should not have been approved on a mitigated negative declaration because of too many potential impacts. A substantial issue determination cannot be made for these contentions because the LCP does not address CEQA issues. The appellants had the opportunity to raise a CEQA challenge during the public review period for the mitigated negative declaration. For the appeal of the County's decision on the coastal development permit, and to determine if the subject appeal raises substantial issues, the standard of review is the LCP. Thus, the contention that the County did not properly administer CEQA does not raise a substantial issue.

Project Description

The appellants contend that the project description is inaccurate (thereby hindering the public's and decision-makers' abilities to assess the environmental impacts), and are specifically concerned that the project description does not discuss that "more than 4,000 trees have been or would soon be felled on the coast, with hundreds of trees disposed of by pushing them over the cliff." Although the LCP does not include explicit requirements for descriptions of projects, it is implicit in the LCP that an accurate project description is necessary in order to adequately evaluate project effects and determine an appropriate recommendation for action on a CDP.

After staff review of the materials, and discussion with the applicant, staff has determined that the project description does adequately and accurately represent the project. The project description states that the project involves the removal of 4,516 trees and shrubs, many of which are less than 12 inches dbh. It is correct that as a result of tree cutting activities that occurred prior to issuance of the County permit, a number of these trees were cut and dropped onto the slopes above McWay Cove, and that action is not included in the description of the project. According to Senior State Parks Resource Ecologist Tom Moss (in an email dated March 18, 2005 to Coastal Commission staff), the trees and shrubs that were cut in areas I and III (which include the slopes above both McWay Cove and the beach north of the former house site) were originally to be dropped in place and cut up in to smaller sections;



however, the County's cease work order effectively stopped any further action on any chipping or removal of these trees, and so they still remain on site (as shown in the photos in Exhibit 8). According to State Parks and as confirmed by Coastal Commission staff, approximately 50 exotic trees and shrubs were cut in area III (above McWay Cove), many of which were multi-stemmed eucalyptus trees.

As such, the project description as approved by the County is accurate and consistent with CDP application requirements, and no substantial issue is raised. Specific concerns regarding the impact of removal of these trees is discussed above under the ESHA substantial issue findings.

Project Reports/Surveys

The LCP contains specific requirements for biological reports and surveys for development in documented or expected locations of environmentally sensitive habitats. The appellants assert that the project reports do not contain the information normally required for non-governmental projects, and that the LCP requires all biological surveys to be prepared by qualified biologists from the County's list of approved biologists (on which State Parks employees are not listed).

The appeal states that "the biological assessment prepared by State Parks indicates 24 strongly suspected or confirmed sensitive animal species at JPBSB, though 20 of the 24 species receive no discussion." The Big Sur LCP requires project-specific biological surveys to identify rare and endangered plant and animal species or provide a determination that no such species are present. The biological assessment indicates that while 24 sensitive species are present in the 3,762-acre JPBSB, based on published reports from earlier studies and species-specific surveys conducted by State Parks ecologists prior to the start of the project, none have been recently documented in the immediate project area. Despite this, the assessment provides discussion of 4 sensitive animal species because of the possibility of their presence in the project area based on various factors, and is augmented by a Smith's blue butterfly and monarch butterfly report prepared by a consultant for State Parks. As such, the report adequately covers the species of concern for the specific project area, and the ESHA findings discussed above address specific issues with protection of those species and their habitats under the LCP.

The County's final action notes that the County's approved consultant list is provided to assist residents in selecting qualified consultants to conduct surveys and prepare reports required as part of the coastal development permit process. The County findings go on to state that "State and local employees are not on the County's approved list of consultants because [such staff] are not for hire by the private community" and that in this particular case, County staff accepted reports prepared by State Parks staff as an agency that is known to have qualified technical expertise in biology and ecology. The final action states that this is common practice for any state or local agency; however, the County notes that they went the extra step to have the Department of Fish and Game (DFG) peer review the reports presented by State Parks.

State Parks is responsible for managing more than 270 park units that contain diverse collections of natural, cultural and recreational resources. To manage, maintain, and preserve these units, State Parks employs (among others) biologists, and ecologists with expertise in their field and in natural resource



management. Furthermore, there is nothing in the LCP that restricts the County from using State Parks biologists to prepare biological reports and assessments. Therefore, because State Parks is considered a qualified agency, and State Parks biologists and resource ecologists are considered qualified individuals for the purpose of conducting field surveys and preparing biological reports and recommending mitigation measures with the purpose of ensuring the protection of environmentally sensitive habitat areas, no substantial issue is raised.

Preferential Treatment

The appeal includes a series of statements that suggest that State Parks received special treatment. The LCP contains requirements that lead the County to make findings and impose conditions on projects during the coastal development permit process. Staff review of the record for this project did not reveal any deviation from this process in order to grant State Parks a permit. Furthermore, the test for substantial issue is whether or not the policies and implementation measures of the LCP were followed, and this is discussed above under the ESHA substantial issue findings.

3. Substantial Issue Conclusion

The County followed the appropriate procedural steps in their approval of a CDP for the project. Therefore, no substantial issues exist for those procedural appeal contentions that are relevant to the LCP.

6. De Novo Findings and Declarations

A. Project Background

The California Department of Parks and Recreation (State Parks) embarked on the Julia Pfeiffer-Burns State Park Waterfall House Landscape Maintenance Project as part of the region-wide Big Sur Native Landscape Recovery Project, which was initiated by the Big Sur Multi Agency Advisory Council with the aim of eliminating invasive exotic species along the Big Sur coast. Funding for the Waterfall House Landscape Maintenance Project was secured through an Environmental Enhancement Mitigation Program grant and funds from various State Parks programs, and ongoing maintenance of the project will be undertaken with funds from State Parks' Category 1H – Resource Maintenance Program.

On April 5, 2002, State Parks completed a Resource Management Plan (RMP) for the project that described the methods for eradication, control, and replacement of exotic plants with native plant species in the project area. The project and RMP were reviewed by State Parks staff and determined to be consistent with State Parks policies and resource management directives, and a Categorical Exemption (Class 1 Section 15301) was filed on June 4, 2002 with no opposition. Prior to undertaking the project, State Parks determined that a coastal development permit (CDP) was not required for the project pursuant to Big Sur CIP Section 20.145.060.A.1.a which exempts the removal of major vegetation that consists of non-native or planted trees. As a result of their reading of the LCP, State



Parks commenced work on the project in late summer 2002 without a CDP. After approximately half of the work was completed on the project, the Monterey County Planning and Building Inspection Department (County) determined that a CDP was in fact required because the work was occurring on slopes of 30 percent or greater and within 100 feet of ESHA. Once the County determined that a CDP was necessary, the applicant was required to cease work until a permit could be obtained. State Parks submitted an application for a CDP and, on December 5, 2003, the County filed the application as complete, and subsequently prepared an Initial Study/Mitigated Negative Declaration for the project on March 8, 2004.

On September 28, 2004, the Waterfall House Landscape Maintenance Project was approved by the Monterey County Board of Supervisors subject to a number of conditions (see Exhibit 4, Local Approval). The Final Local Action Notice was received in the Santa Cruz office of the Coastal Commission on October 19, 2004. A timely appeal to the Coastal Commission was filed on November 2, 2004.

B. Project Location and Description

The project is located in Julia Pfeiffer-Burns State Park (JPBSP) on the Big Sur Coast in Monterey County. Julia Pfeiffer-Burns State Park extends over 3,762 acres on both sides of Highway 1 generally between Partington Point/Creek on the north end and the John Little State Reserve on the south end. The project is located in an approximately 35-acre area at the site of the former Waterfall House and South Garden above McWay Cove on the west side of Highway 1. The project area also includes a small portion of the land on the east side of Highway 1 in the vicinity of McWay Cove (Exhibits 1, 2, and 7).

In 1924, Lathrop and Helen Hooper Brown, the owners of the property at the time, planted various fast growing trees on the property and around their cabin for screening, wind protection, and ornamental purposes. In 1940, the cabin was replaced by the "Waterfall House," which included two elaborate gardens and an assortment of ornamental plant species around the bluffs above McWay Cove. These included Canary Island date palms, blue gum eucalyptus, Monterey pines, Victoria boxes, Bailey acacias, Monterey cypresses, and fruit trees. In 1961, the property was gift deeded to State Parks, the house was demolished, and a trail was established on the cliffs above the cove.

State Parks initiated the Landscape Maintenance Project in order to eradicate many of the various exotic, non-native plants and restore the native plant community in the vicinity of the Waterfall House. The project is divided into nine treatment areas that cover the 35-acre project site (Exhibit 3). The following is a project summary from the Waterfall House Landscape Maintenance Project RMP, dated April 5, 2002, and updated December 4, 2003 (to include the Biological Assessment conducted by State Parks and an Entomological Report conducted by Dr. Richard Arnold):²

² Since the County originally had told State Parks that no permit was required, no biological reports were submitted prior to work conducted in July, August and September of 2002. However, once the County determined that a permit was necessary due to work on slopes over 30%, and within 100 feet of mapped ESHA, the County indicated that biological surveys were required. Thus the



Many of the original landscape trees planted by Helen Hooper Brown remain today. However, because of insufficient maintenance, thousands of volunteer blue gum eucalyptus, Victoria box and Bailey acacia seedlings have invaded spaces between the original plantings, creating a landscape that appears to be extremely overgrown and unmanaged. The seedlings are competing and adversely impacting many of the original landscape trees and shrubs, particularly the date palms, Victoria boxes and a magnolia tree. The view of the waterfall and most of the coastline has become blocked by a dense growth of eucalyptus seedlings. Forty-one blue gum eucalyptus trees with diameters up to 29 inches (dbh) have become established within the footprint of the former Waterfall House since it was demolished in 1966, and are now causing significant damage to the remaining structural features of the house. Hundreds of Victoria box seedlings have filled in the terraced garden area below the Waterfall House, which was formerly very open in character with its lawn and low landscaping plants.

...In addition to spreading over much of the bluff top surrounding McWay Cove, young groves of eucalyptus and Victoria box have become established on the inland side of the highway and are spreading up the mountainside. Several other invasive exotic species, including pampas grass and cape ivy, which were not introduced by the Browns, are also spreading over portions of the project area.

Since State Parks acquired the property in 1961, thousands of volunteer seedlings that originated from the Brown's early landscape, particularly blue gum eucalyptus, Victoria box and Bailey's acacia, have spread well beyond the original planting sites, competing prohibitively with the original landscape plants and displacing native plants and wildlife habitat, including plants that may provide home to the endangered Smith's blue butterfly. With the exception of 241 trees and shrubs that were planted by the Browns or are protected as "landmark trees," all exotic vegetation is proposed to be eradicated on the project site, amounting to 4,516 trees and shrubs, ranging in size from 0.1 to 23.5 inches in diameter at breast height (dbh). Of this total, 262 trees and shrubs are 12 inches or greater in dbh. Monitoring and maintenance of the project area will occur on an annual basis to prevent establishment of new exotic seedlings...

According to the RMP, all plants identified for removal would be cut and disposed on-site, either by chipping, burning or leaving in place, or hauled off site. Where feasible, logs or rounds from the larger trees would be hauled off-site, preferably where they can be recycled for firewood or energy production, or stacked and pile burned on site. The RMP noted that it would not be feasible to remove all trees and shrubs on steep slopes because of worker safety and high cost concerns. It thus recommended that trees and shrubs would be dropped in place and sectioned ("bucked up") and left to decompose in place or would be stacked and pile burned. The RMP indicated that native vegetation would not be negatively

Biological Assessment was completed in May 2003, and incorporated into an updated Resource Management Plan dated December 2003. State parks also contracted Dr. Richard A. Arnold, of Entomological Consulting Services Ltd, an expert on sensitive butterfly species, to conduct habitat assessments and presence/absence surveys for Smith's blue butterflies and to evaluate the suitability of existing habitat for Monarch Butterfly over-wintering sites. Results of Mr. Arnold's work, submitted in a letter report dated November 11, 2003, were also incorporated into the updated Resource Management Plan dated December 2003.



affected by leaving the cut trees on the ground, as it was expected that vegetation would recover quickly, concealing the downed trees.

As stated in the RMP, the goal of the project is to undertake a maintenance program that will provide for the perpetuation of the cultural landscape while restoring the surrounding native plant community that has been negatively impacted by the uncontrolled spread of the original exotic landscape. The RMP states that the removal of thousands of exotic, volunteer tree and shrub seedlings that have spread over the 35-acre project area is essential to prevent further deterioration and loss of the individual trees and shrubs planted by Helen Hooper Brown and to restore the surrounding native plant community that has been displaced by the encroaching exotic plants. Furthermore, the benefits of the project will include improved health of the remnant cultural landscape, curtailment of root damage to the structural remains of the Waterfall House, improved native plant and animal habitat, restoration of the waterfall and coastline view, and improved recreational enjoyment of the area by park visitors. Exhibits 9 and 10 illustrate some of the changes that have occurred at the site as a result of previously completed non-native vegetation removal.

C. County-Approved Project

The Monterey County approval includes findings and conditions for both previously completed work and future work on the Waterfall House Landscape Maintenance Project at JP BSP. As conditioned by the County, the applicant is required to delineate and avoid any riparian vegetation during the project; conduct surveys for bird nests in trees to be removed between March 1 and July 31; identify and avoid existing seacliff buckwheat plants in the project area; restore and re-vegetate disturbed areas of the site in accordance with the RMP and Monitoring Program (prepared May 3, 2004); haul or chip all trees and plants removed as part of the project, including those felled on the slope above McWay Cove; and implement an Erosion Control Plan throughout the course of the project. See Exhibit 4 for complete text of County findings and conditions.

D. Coastal Development Permit Findings

1. Environmentally Sensitive Habitat Areas (ESHA)

a. Applicable Policies

3.3.1 Key Policy. *All practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas.*

3.3.2.1. *Development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.*



3.3.2.2. *Where private or public development is proposed, in documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals or agencies shall be made in order to determine precise locations of the habitat and to recommend mitigating measures to ensure its protection.*

3.3.2.7 *Land uses adjacent to environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat.*

3.3.2.9. *The County shall require the use of appropriate native species in proposed landscaping.*

3.3.3.A.3. *Development or land use activities shall be sited to protect riparian habitat values. Development adjacent to stream courses shall be restricted to low intensities and constructed to minimize erosion, runoff, and water pollution. In order to protect riparian habitats, land use development activities will not be permitted that will have the effect of diminishing surface flows in coastal streams to levels that will result in loss of plant or wildlife habitat.*

3.3.3.A.10. *Monterey County encourages residents and public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants such as Scotch and French Broom, Eucalyptus, Kikiyu grass, Vinca, Pampas grass, Gorse, and other non-native invasive species providing such removal does not increase potential erosion problems.*

3.3.3.B.1. *Development on parcels adjacent to intertidal habitat areas should be sited and designed to prevent ... deposition of sediment.*

20.145.040.B.1. *All development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the environmentally sensitive habitat areas if it has been determined through the biological survey prepared for the project that the development's impact cannot be reduced to a level at which the long-term maintenance of the habitat is assured, (i.e. to an insignificant level). To approve any development within an environmentally sensitive habitat area, the decision making body must find that the disruption of such habitat caused by the development would not be significant. (Ref. Policy 3.3.2.1)*

20.145.040.B.4. *Development on parcels containing or within 100 feet of environmentally sensitive habitats, as identified on the current Big Sur Coast Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted to adversely impact the habitat's long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat's long-term maintenance. Also, the recommended mitigation measures of the biological survey will be considered and made conditions of project approval. (Ref. Policy 3.3.2.4, Policy 3.3.2.7)*



20.145.040.C.1.c. *Development and land use activities adjacent to riparian habitat shall not adversely impact the long-term maintenance of the habitat nor diminish the stream's surface flow to a level that causes loss of the riparian plant or wildlife habitat. Determination of the potential impacts shall be made through the biological survey and any other consultant reports deemed necessary by staff and/or consulting biologist in order to make an adequate assessment. Mitigation measures, as contained in the biological survey, shall be made conditions of approval where needed to minimize impacts. As well, the project shall be modified including modification of project intensity, location, siting, design, and size as necessary to minimize erosion, run-off, and water pollution. (Ref. Policy 3.3.3.A.3)*

20.145.040.C.1.d. *All development shall be set 150 feet back from each bank of perennial and intermittent streams, as mapped on U. S. Geological Survey maps or as identified by the Department of Fish and Game. The decision-making body may allow a reduction in the required setback if it has been conclusively demonstrated in the biological survey that the reduced setback is sufficient to protect existing riparian vegetation from the impacts of development. As well, the decision-making body may require a wider setback if so recommended in the biological survey or otherwise necessary for the mitigation of development impacts to existing riparian vegetation. Where the biological survey identifies areas of previously-disturbed riparian vegetation on the parcel, a condition of project approval shall include replanting of riparian vegetation where such replanting would restore the habitat and is so recommended in the survey (Ref. Policy 3.3.3.A.4)*

20.145.040.C.2.a. *Development on parcels adjacent to intertidal habitat areas shall be modified as necessary, including for siting, location, design, and size where necessary to prevent... deposition of sediment into the habitat (Ref. Policy 3.3.3.B.1)*

b. ESHA Identification at the Project Site

One of the most important steps in the development review process is to accurately identify the presence of ESHA within or adjacent to the development site. The Big Sur LCP (LUP Section 3.3) defines environmentally sensitive habitats as “areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem.” Examples of ESHA identified in the Big Sur LUP include (among other things): riparian corridors, rare and endangered species habitat; Monarch butterfly mass over-wintering sites, and all tideland portions of the California Sea Otter State Fish and Game Refuge.

The RMP (which includes the Biological Assessment prepared May 15, 2003 and the Entomological Consulting Services Report for Smith’s Blue Butterfly and Monarch Overwintering Habitat prepared November 11, 2003) characterizes environmentally sensitive habitat areas in JP BSP and the project area as follows:

- Two environmentally sensitive plant communities occur in the project area – Northern Coastal Bluff Scrub and Central Coast Arroyo Willow Riparian Forest. Both plant communities are very



small, representing less than five percent of the overall project area. Remnant patches of Northern Coastal Bluff Scrub occur near the seaward edges of the McWay Cove headlands. The distribution of this plant community may have been more widespread on the headlands prior to the introduction of the Monterey cypresses, which now cover the outermost portions of the headlands. No tree removal or related activity is proposed within either plant community.

- Five sensitive plant species have been identified in JPBSP: Lewis clarkia (*Clarkia lewisii*), Santa Lucia fir (*Abies bracteata*), branching beach aster (*Lessingia filaginifolia*), Rattan's cryptantha (*Cryptantha rattanii*), and Santa Lucia gooseberry (*Ribes seiceum*). However based on historic and current survey information, no sensitive plant species occur in the project area.
- Three butterfly species – Smith's blue butterfly, Doudorff's elfin butterfly and monarch butterfly occur in the park, but none have been observed in the project area.
- The lower section of McWay Creek contains a narrow riparian corridor that passes through the project area. A habitat suitability survey by State Park ecologists determined that the area lacks suitable breeding habitat for California red-legged frog. In addition, no tree removal or related activity is proposed in the riparian corridor, nor will any trees be dropped into the corridor. The closest exotic tree is over 60 feet from the creek, just outside the riparian corridor. Therefore, removal of the exotic trees should have no effect on riparian plants or red-legged frogs. Instead, the project is expected to have a positive effect by elimination of exotic trees that in the near future would be expected to invade and displace native riparian species.
- No bird species of special concern have been observed nesting in the project area. Special precautions will be taken to ensure that no nesting birds, regardless of protection status, are impacted during all exotic tree and shrub removal. A State Park ecologist will inspect trees for bird nesting prior to tree removal. If a nest or nesting activity is observed, the tree will be retained until the young have fledged and left the tree.

The substantial issue analysis found that, with the exception of Smith's blue butterfly habitat and nearshore/intertidal habitat, the County-approved project is consistent with LCP ESHA policies. As described below, the project could adversely impact Smith's blue butterfly habitat and nearshore/intertidal habitat and does not adequately provide for maintenance and monitoring to ensure long-term viability of these ESHAs.

c. Consistency Analysis

Smith's Blue Butterfly Habitat

According to the Biological Assessment prepared for the project, sensitive species of special concern that could be impacted by the proposed project includes the Smith's blue butterfly. However, the assessment goes on to note that seacliff buckwheat is very scarce in the project area and does not occur in stands large enough to support any Smith's blue butterflies. The nearest suitable stand of seacliff



buckwheat formerly occurred along the entrance road into the park (outside of the project area), but now it appears to have been overwhelmed with other native vegetation. Dr. Richard Arnold, of Entomological Consulting Services, Ltd., also conducted habitat assessment and presence absence surveys for Smith's blue butterfly within the project area during the Smith's blue butterfly flight season, on five separate days, including July 7, 11, 24, 30 and August 7, 2003, when adults were active at Burns Creek (located just south of the southern border of the park). The letter report prepared by Dr. Arnold, dated November 11, 2003, states that the nearest known locations of the butterfly to the 35-acre project site are just south of Anderson Canyon and immediately north of Partington Canyon, both on the east side of Highway 1.

The Arnold report notes that no life stages of the Smith's blue butterfly were observed within the project site, and that the habitat quality for Smith's blue butterfly is poor, as a result of limited biomass of seacliff buckwheat. The report states that

...a few individuals and small stands of Eriogonum parvifolium grow widely at scattered locations in the coastal bluff scrub vegetation within the project site. Also, the locations that support this buckwheat tended to be more exposed rather than sheltered sites.

...natural occurrences of E. parvifolium [were observed] in treatment areas I, V, VI, VII, [and] IX. ...collectively, [it is estimated that] no more than 50 individuals of E. parvifolium grow at these locations. Most of these buckweats produced few flowers and they were surrounded by dense coastal bluff scrub vegetation. Exotic plants, such as Eucalyptus, Pittosporum, and Acacia that are targeted for removal, shade and out-compete the buckwheat food plant of the Smith's Blue.

In order to evaluate the vegetation removal that occurred prior to the surveys, Dr. Arnold reviewed aerial photographs of the site. And although individual buckwheat plants could not be identified in the aerial photos used, the report notes that the photos indicated that vegetation in the treatment areas was quite dense prior to vegetation removal. The report states that:

Today, in portions of the project site where exotics have not yet been removed, buckwheat numbers are quite limited. Since buckweats grow where they are exposed to direct sunlight, they would not have been growing in the dense trees stands where removal has already occurred. Thus overall, buckwheat numbers are not likely to have been reduced by the tree removal that has occurred to date.

The report summary notes that the apparent absence of the butterfly is probably due to the poor quality of its habitat and limited biomass of *E. parvifolium*. The report states that removal of the exotic plants would improve the opportunities for natural recolonization of the buckwheat within the project site, which would improve the overall habitat quality of the Smith's blue butterfly in the long-term. It also notes that while no Smith's blue butterfly life stages were observed, small numbers of the butterfly may utilize the existing plants on site, and therefore recommends that existing buckwheat plants be identified and protected before Phase II restoration efforts resume. It also notes that the protection of existing



plants and the restoration buckwheat plantings will assure that Smith's blue butterflies can recolonize the area as quickly as possible after the project has been completed

Based on staff review and evaluation of the County's record, project activities that have occurred to date have not adversely affected Smith's blue butterfly habitat. Biological reports indicate that removal of the dense non-native vegetation in the project area will help the existing buckwheat plants by increasing the amount of sunlight available to these plants, which is necessary for optimum growth. Additionally, the County condition requiring fencing will help to protect existing plants, and proposed replanting of buckwheat plants will increase the number of plants on site, which will improve the health of the Smith's blue butterfly habitat within the project area. As such, with regard to Smith's blue butterfly, the project can be found to be consistent with LCP policies that encourage the restoration of ESHA and removal of non-native plants in order to enhance native habitats.

However, the monitoring program (dated May 3, 2004 and developed in order to guide and monitor implementation of the RMP) and the RMP itself do not provide sufficient details regarding monitoring, reporting, and long-term maintenance of the restored areas. The monitoring program is generally conceptual, and provides a limited discussion of reporting requirements and performance standards. Without greater details as to restoration methods, monitoring procedures, and success criteria, among other things, the project poses inconsistencies with LCP policies that call for assurances of long-term maintenance of ESHA.

In order to ensure full compliance with the LCP, the applicant has prepared a detailed restoration plan that addresses these LCP inconsistencies. The Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan (dated August 8, 2006, prepared by Rana Creek Habitat Restoration) augments the RMP and monitoring program and includes detailed restoration methods (including plant lists and quantities for each treatment area), erosion control measures, monitoring goals and procedures, success criteria, and reporting guidelines. This restoration and mitigation plan proposed by State Parks meets what the Commission normally requires for restoration plans where resource impacts and mitigation are anticipated. Special Condition 1 requires implementation of the Restoration and Mitigation Plan as part of the project in order to ensure full consistency with the LCP. In addition, Special Condition 2 requires evidence of USFWS review and approval of the project, or a statement that no review or approval is necessary, to provide conclusive evidence that the project will not impact Smith's blue butterfly habitat.

Nearshore and Intertidal Habitat

The project site is within close proximity to the marine environment at McWay Cove. The LCP prohibits any development in ESHA if it results in any potential disruption of habitat value (LUP Policy 3.3.2.1 and CIP Section 20.145.040.B.1), and requires that all development adjacent to intertidal habitat areas be designed and carried out to prevent the deposition of sediment into the habitat (LUP Policy 3.3.3.B.1 and CIP Section 20.145.040.C.2.a). According to the RMP, all plants identified for removal would be cut and disposed on-site, either by chipping, burning or leaving in place, or hauled off site, but it would not be feasible to remove all trees and shrubs on steep slopes because of worker safety and high



cost concerns. It thus recommended that trees and shrubs cut on steep slopes would be dropped in place and sectioned (“bucked up”) and left to decompose in place or would be stacked and pile burned. The RMP indicated that native vegetation would not be negatively affected by leaving the cut trees on the ground, as it was expected that vegetation would recover quickly, concealing the downed trees.

As described above, the portion of the project completed by State Parks prior to obtaining a CDP resulted in the felling of trees on the steep slopes above McWay Cove. According to the applicant and the RMP, the trees and shrubs that were cut on the slopes above both McWay Cove were originally to be dropped in place and cut up in to smaller sections; however, the County’s cease work order effectively stopped any further action on any chipping or removal of these trees, and so they remain on site. Because of the steepness of the slopes above McWay Cove, sediment loosened by the downed vegetation and/or the vegetation itself could slide down over time and drift into the intertidal/nearshore area and adversely affect this habitat.

The Mitigated Negative Declaration prepared for the project found that the trees felled on the slope above McWay Cove could slide down over time and drift into the ocean, and logs and debris in the nearshore environment could adversely impact organisms and species in this area. However, the analysis found no evidence that any damage had occurred from previously felled trees, and that the new vegetation planted in that area after the trees were felled has taken hold and removal of the trees at this point could result in greater impacts to the tidewaters from erosion. Nevertheless, in order to reduce any potential impacts of allowing the trees to remain on the slopes, County conditions require the applicant to remove all felled trees and plants on the slope above McWay Cove and revegetate bare areas of the slope with native plants, in accordance with the required restoration and erosion control plans (County Conditions 8, 9 and 10). The erosion control plan prepared by State Parks (dated December 5, 2003) for the project contains a brief description of general erosion control measures that will be taken to protect soil exposed during vegetation removal. To further protect against sedimentation and other impacts to the nearshore and intertidal habitats below the project site consistent with the LCP, Special Condition 1 requires inclusion of the additional erosion control measures contained in the Waterfall House Landscape Maintenance Project Restoration Plan. Only as conditioned can the project be found consistent with the LCP.

d. ESHA Conclusion

The project, as conditioned, is consistent with the LCP because it avoids both short- and long-term impacts to Smith’s blue butterfly and nearshore and intertidal habitats. Only as conditioned will the project ensure the biological continuance of these ESHAs and be consistent with the ESHA protection provisions of the LCP.

2. Tree Removal/Forest Resources

a. Applicable Policies



The following LCP policies and ordinances are relevant to tree removal and protection of forest resources:

LUP Policy 3.5.2.2. All cutting or removal of trees shall be in keeping with the broad resource protection objectives of this plan. Specific policies, criteria, and standards of other sections of this plan shall govern both commercial and non-commercial tree removal.

LUP Policy 3.5.2.4. Landmark trees of all species shall be protected in perpetuity as significant features of Big Sur's natural heritage. The California Department of Forestry, scientists from research institutions, and landowners should cooperate in the protection and enhancement of these resources and their supporting habitat. Landmark trees shall be defined as visually significant, historically significant, exemplary of its species, or more than 1000 years old.

LUP Policy 3.5.3.3. All salvage or selective logging activities shall take place outside the riparian corridor except the felling of trees. Felling and bucking shall not occur where trees, logs or debris could be deposited in the stream....

LUP Policy 3.3.3.A.10. Monterey County encourages residents and public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants such as Scotch and French Broom, Eucalyptus, Kikuyu grass, Vinca, Pampas grass, Gorse, and other non-native invasive species providing such removal does not increase potential erosion problems.

CIP Section 20.145.060.B.1. A Forest Management Plan will be required for the following:

- a. tree removal requiring a Coastal Development Permit; and
- b. tree removal, regardless of tree size, type, or amount, proposed as part of a development requiring a Coastal Development Permit.

CIP Section 20.145.060.B.2. The Forest Management Plan shall be required, submitted, and approved by the Director of Planning prior to the project application being determined complete. Three copies of the Forest Management Plan shall be submitted, such that there is an approved copy for the project file, applicant, and the Monterey County Planning Department Library.

CIP Section 20.145.060.B.3. The Forest Management Plan shall be prepared by a qualified professional forester, as selected from the County's list of consulting foresters. Plan preparation shall be at the applicant's expense.

CIP Section 20.145.060.B.4. The Forest Management Plan shall consist of a plot plan and a Forest Maintenance Plan. Both elements shall be prepared in accordance with Attachment 1 [of the CIP]...The Forest Management Plan shall apply to the entire parcel, even if tree removal is proposed only for a portion of the parcel.



CIP Section 20.145.060.D1. *Landmark trees of all species shall not be permitted to be removed. A landmark tree is one which is 24 inches or more in diameter when measured at breast height, or a tree which is visually significant, historically significant, exemplary of its species or more than 1,000 years old...*

CIP Section 20.145.060.D.2. *Removal of any trees which would result in the exposure of structures in the critical viewshed shall not be permitted, subject to the provisions of Section 20.145.030.A....*

CIP Section 20.145.060.D.5. *Tree removal shall not be permitted within the riparian corridor. Trees located beyond the riparian corridor shall not be felled into the riparian corridor, unless it is demonstrated that the felling and bucking of such trees will not result in trees, logs, or debris being deposited in the stream. ... (Ref. Policy 3.5.3.3)*

b. Consistency Analysis

The LCP encourages the removal of exotic plants that may threaten the native landscape (LUP Policy 3.3.3.A.10), while maintaining that all tree removal be consistent with the broad resource protection policies of the LCP. Landmark trees (regardless of species) are not permitted to be removed and shall be protected in perpetuity as significant features of Big Sur's natural heritage (LUP Policy 3.5.2.4). The LCP also requires a forest management plan (FMP) for any tree removal that requires a CDP, and provides specific requirements for the content of FMPs. Attachment 1 of the CIP lists the required components of an FMP, which include (among other things) a site description, project description, a plot plan that shows the locations/types of trees to be removed and replanted, assessment of the project's impacts to forest resources, and management objectives and measures.

The Landscape Inventory, included as part of the RMP, identifies the number of all trees and shrubs proposed for removal under the project. The Landscape Inventory was compiled as a result of a three-year vegetation assessment conducted by State Parks to determine which non-native trees and shrubs should be considered historically significant and retained and which non-native trees and shrubs should be removed because they threaten the health of the remaining plantings, threaten the historic foundations of the earlier buildings, and are displacing native plant habitats in the area. The Landscape Inventory is broken down by species and size categories, across nine different treatment areas (Areas I through IX). The inventory identified 241 trees and numerous smaller plants as either original plantings and so historically significant, or protected by the Big Sur Coast Land Use Plan as landmark trees. With exception of these 241 trees, the project proposes eradication of all non-native vegetation on the project site, which according to the RMP, was calculated to include 4,516 non-native trees and shrubs.

For a better understanding of the work that was completed prior to issuance of the CDP, State Parks provided Coastal Commission staff with a project status report (dated March 16, 2005, Exhibit 6). The



status report indicates that some work has been accomplished in Treatment Area 1,³ all work has been accomplished in areas II-V, and work remains to be completed in Treatment Areas I, and VI through IX. The status report also updates the total number of non-native trees and shrubs to be removed and retained as part of the project from 4,516 to 3,513 (removed) and from 241 to 239 (retained). Based on the report, a total of 2,407 non-native trees and shrubs have been felled and 96 trees and shrubs have been retained as part of Phase I work. Work still to be done (Phase II work) includes 1,106 non-native trees and shrubs to be cut, and 143 trees and shrubs to be retained.

The project is generally consistent with LCP policies that encourage the removal of non-native plants, and appropriately retains those trees considered by the LCP to be landmark trees. In order to ensure that those non-native landmark trees do not spread after the project is completed, the RMP includes general maintenance criteria for removal of volunteer seedlings. Approximately half of the non-native landmark tree species that are proposed for retention under the project have proven to be extremely invasive, including Eucalyptus, acacia, Victoria box, Monterey cypress, and Monterey pine. However, the remaining non-native landmark trees species (Canary Island date palm, magnolia, coast live oak, and bay laurel) have not spread beyond the original landscape specimens, and are not considered by State Parks staff to pose a threat to native habitats. Nevertheless, the project intends to monitor for and remove all non-native seedlings that develop after completion of all initial invasive vegetation removal. In order to ensure full consistency with policies that require the removal of trees to be in keeping with the broad resource protection objectives of the LCP, Special Condition 1a requires implementation of the Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan that was prepared by State Parks after County approval of the project. This plan augments the RMP and monitoring program and includes detailed restoration methods and success criteria that will ensure that invasive plant eradication goals are met.

Similarly, the RMP is considered to be by and large sufficient to meet LCP requirements for a FMP since it contains the various components required by Attachment 1 of the CIP. However, the RMP lacks certain components, such as replanting details (numbers and types) that are critical for a project with such extensive tree and vegetation removal. As such, the project has been conditioned to require implementation of the Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan which includes the necessary replanting details that will bring the project into full consistency with FMP requirements of the LCP.

c. Tree Removal/Forest Resources Conclusion

The proposed project is consistent with LCP provisions that encourage exotic plant removal and retention of landmark trees, but lacks the necessary details required by the LCP for success criteria, monitoring, and replanting. Special Condition 1 requires implementation of Waterfall House Landscape Maintenance Project Restoration and Mitigation Plan that provides the full array of components required by the LCP for such an exotic plant removal and native plant restoration project.

³ According to Tom Moss, Senior State Parks Resource Ecologist, 60 Victoria Box (*Pittosporum undulatum*) trees under 12" still need to be removed in Area I.



2. Visual Resources

a. Applicable Policies

LUP Key Policy 3.2.1. *Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.*

LUP Policy 3.2.3.A.9. *The County encourages creative public and private efforts to restore the scenic beauty of visually impacted areas of the coast and will assist such efforts where possible.*

CIP Section 20.145.060.D.1. *Landmark trees of all species shall not be permitted to be removed. A landmark tree is one which is 24 inches or more in diameter when measured at breast height, or a tree which is visually significant, historically significant, exemplary of its species or more than 1,000 years old...*

CIP Section 20.145.060.D.2. *Removal of any trees which would result in the exposure of structures in the critical viewshed shall not be permitted, subject to the provisions of Section 20.145.030.A....*

CIP Section 20.145.150. *Because preservation of the natural environment is the highest priority, all future [public] access must be consistent with this objective. Care must be taken that while providing public access, the beauty of the coast, its tranquility and the health of its environment are not marred by public overuse or carelessness. The protection of visual access should be emphasized throughout Big Sur as an appropriate response to the needs of recreationists.*

b. Consistency Analysis and Conclusion

The Big Sur LCP is highly protective of the critical viewshed, which includes everything within site of Highway 1 and major public viewing areas. Previously completed vegetation removal work and future project work involves removal of invasive non-native vegetation that has effectively blocked views of McWay Falls and the Big Sur coastline from trails within JP BSP (see Exhibit 10). Consistent with the LCP, the project involves preserving the Big Sur Coast's beauty and restoring the natural beauty of visually degraded areas (LUP Policy 3.2.1) and preserving landmark trees that are both historically and visually significant (CIP Section 20.145.060.D.1). Removal of the felled trees on the slopes above McWay Cove, as required by County condition 9, will ensure that these trees do not continue to detract from views of the bluff, McWay Cove, and the ocean.

In order to achieve full compliance with the LCP, Special Condition 1a requires implementation of the



Waterfall House Landscape Maintenance Project Restoration Plan. Incorporation of the detailed restoration and erosion control measures included in this plan will ensure the long-term success of site restoration, thereby ensuring that the scenic beauty of the project area is restored and maintained consistent with LCP provisions.

4. Access and Recreation

a. Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. The policies of relevance to the proposed project include:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211:** Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212(a):** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:...(2) Adequate access exists nearby...*

b. Public Access Consistency Analysis and Conclusion

The Coastal Act requires that all projects proposed between the first public road and the sea be analyzed for compliance with the public access and recreation policies of the Coastal Act. The project is consistent with the relevant Coastal Act policies that require the protection of public access and recreation opportunities. As a State park with ample public trails, public access is provided throughout the project vicinity, and multiple points exist in the park where public access is provided to the coast. Within the immediate project vicinity, the Waterfall Trail provides public access and recreation to and along the coast. The project involves removal of non-native vegetation that has blocked views of the coast from this trail and threatened perpetuation of the native landscape, and full project implementation will both preserve public access and protect a natural resource area from overuse. The project would not block or otherwise impede public access, and is therefore considered to be consistent with the public access and public recreation policies of Chapter 3 of the Coastal Act.

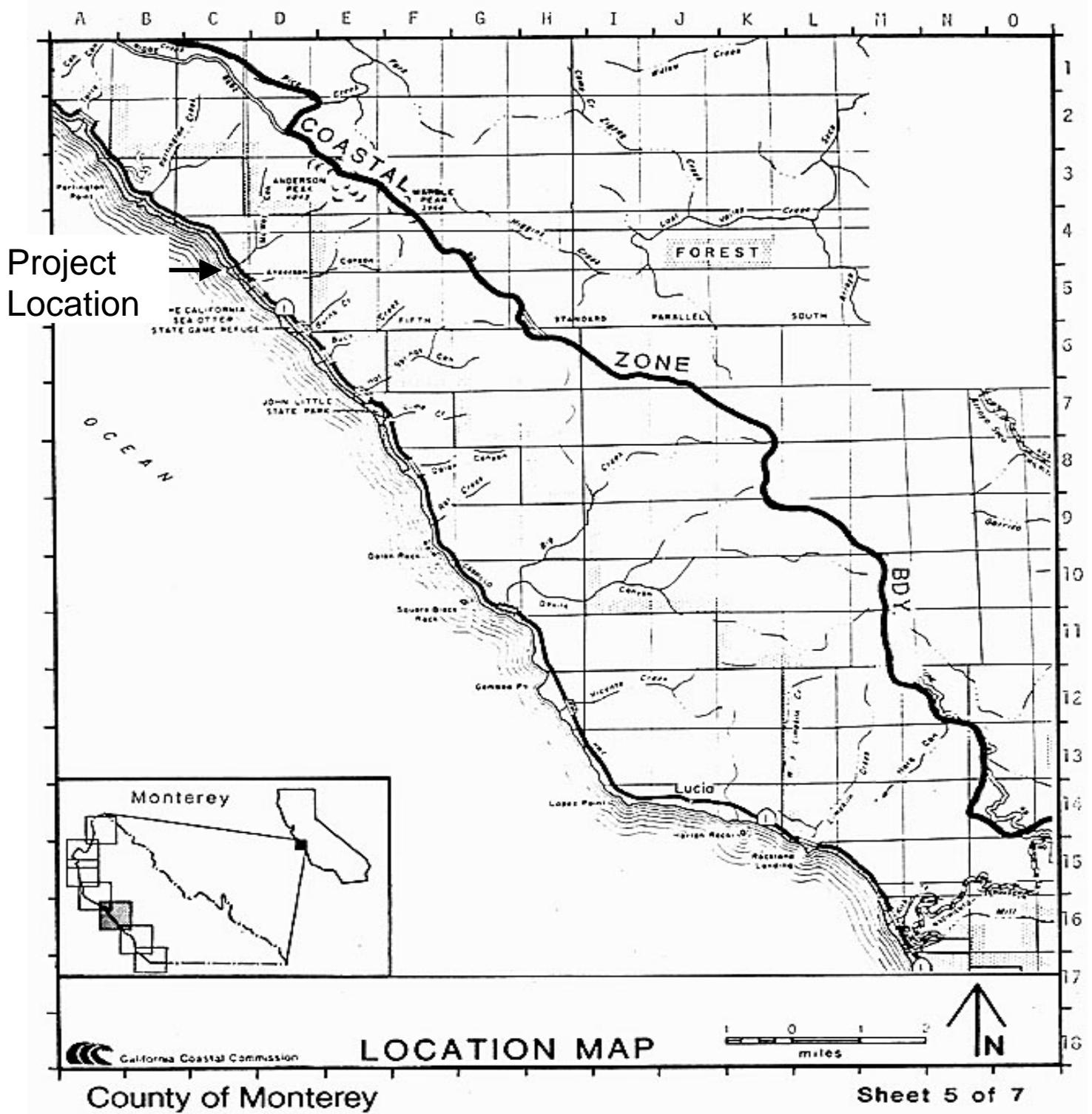
E. California Environmental Quality Act (CEQA)



Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.



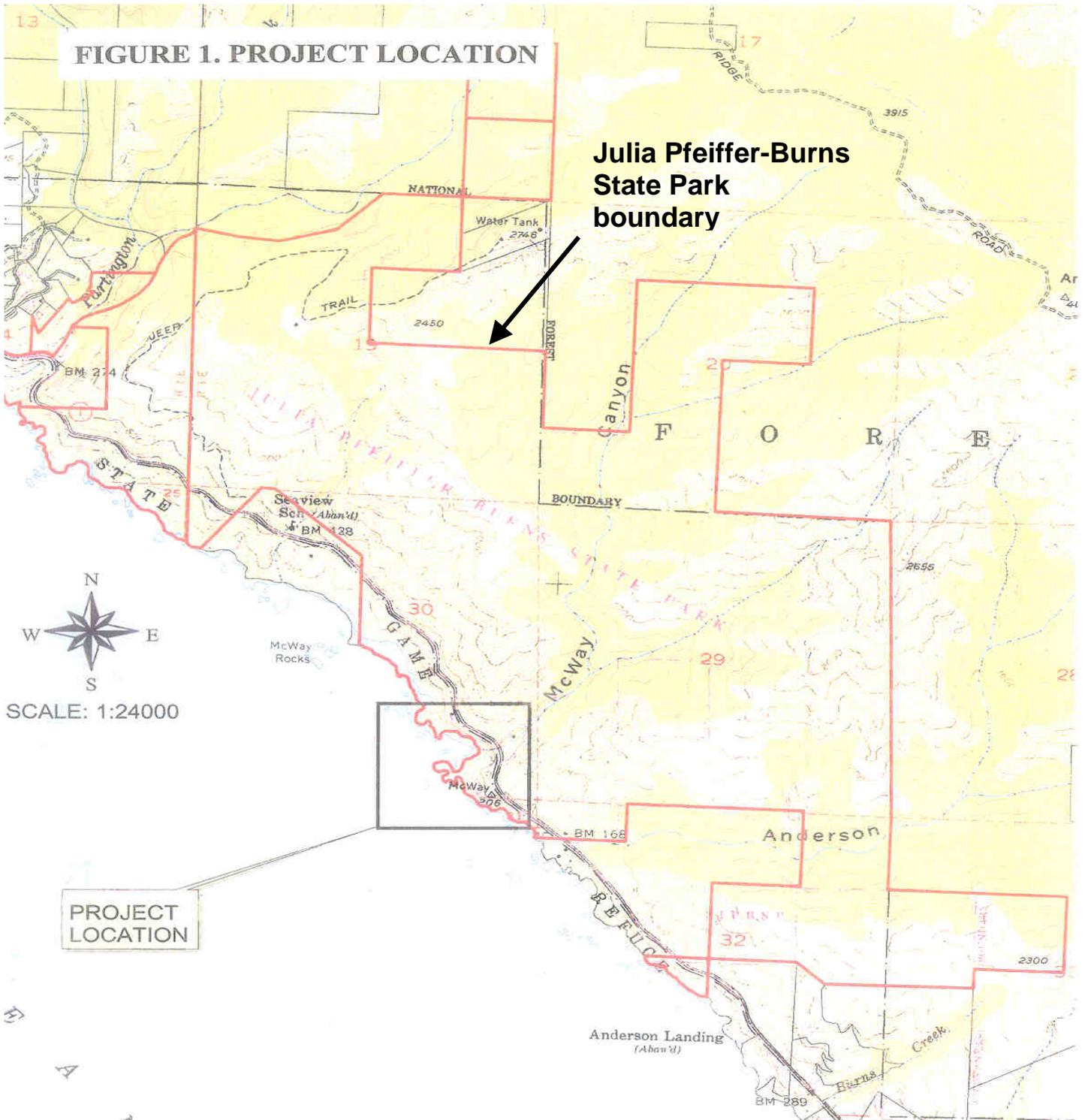


Project Location



 <p>CALIFORNIA COASTAL COMMISSION</p>	<p>Location Map</p>	<p>EXHIBIT 1</p>
		<p>JPBSP Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a</p>

FIGURE 1. PROJECT LOCATION



**WATERFALL HOUSE LANDSCAPE
MAINTENANCE PROJECT
JULIA PFEIFFER BURNS STATE PARK**

**USGS 7.5 MINUTE TOPO
PARTINGTON RIDGE**

 CALIFORNIA COASTAL COMMISSION	Project Site	EXHIBIT 2
		JPBSP Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a

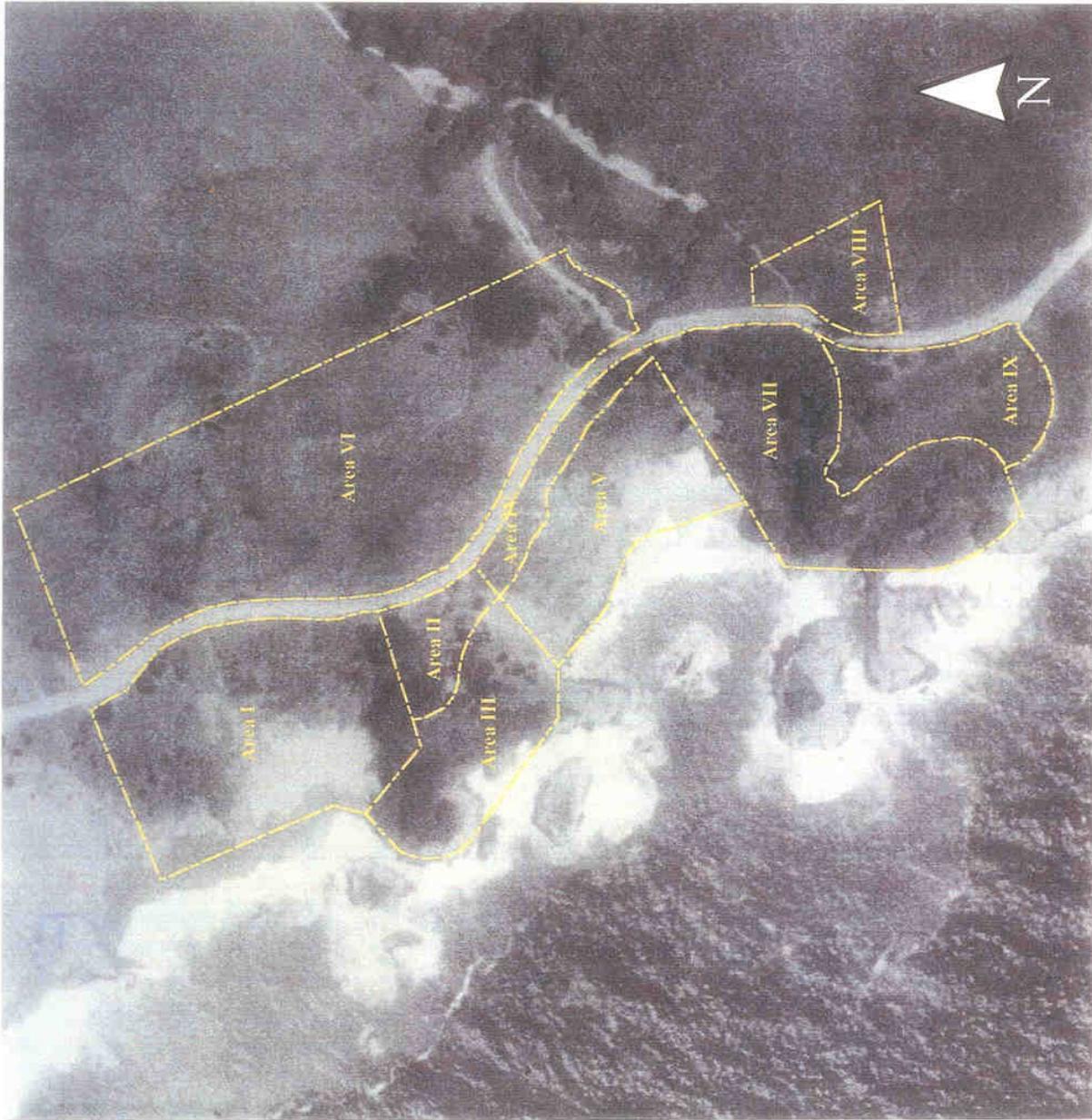


Big Sur Resources
 Andrew Molera
 State Park
 Big Sur, California
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Waterfall House Landscape Maintenance Project
 Julia Pfeiffer-Burns State Park, Big Sur, CA

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Figure 3



1 Treatment Areas

F3 Scale: 1" = 4558'

4.4.2002



CALIFORNIA COASTAL COMMISSION

Vegetation Treatment Areas

EXHIBIT
3

JPBSP Waterfall House
 Landscape Maintenance Project
 A-3-MCO-04-064
 Item: Th10a

OCT 19 2004

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 04-326

Approve a Coastal Development Permit (PLN030620/Julia Pfeiffer-Burns State Park) for the Waterfall House Landscape Maintenance project consisting of replacing 4,516 exotic plants (trees and shrubs) with native plants near environmentally sensitive habitat and on slopes exceeding 30% at Julia Pfeiffer-Burns State Park, Highway One, Big Sur (Assessor's Parcel Number 420-021-007-000, 420-021-022-000, 420-021-033-000, 420-021-034-000, 420-021-020-000, 420-011-027-000, 420-221-013-000 and 420-221-020-000), Coastal Zone.....)

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA FINAL LOCAL ACTION NOTICE REFERENCE # 3-MCO-04-350 APPEAL PERIOD 10/20-11/2/04

The above-captioned matter came on for hearing before the Board of Supervisors of the County of Monterey on July 13, 2004, was continued to August 24, 2004 at the request of the appellant. The Board adopted a Resolution of Intent to approve the project with changes that were considered on September 14, 2004 and provided additional direction for conditions that were presented September 28, 2004. Having considered all the written and documentary information submitted, the staff reports, oral testimony, and other evidence presented before the Board of Supervisors, the Board of Supervisors hereby finds and decides as follows:

FINDINGS

1) FINDING – COMPLY WITH REGULATIONS: The subject Combined Development Permit (PLN030620/ Julia Pfeiffer-Burns State Park) complies with all applicable requirements.

EVIDENCE:

- a. On December 5, 2003, the California Department of Parks and Recreation (State Parks) filed an application for Coastal Development Permit (PLN030620/Julia Pfeiffer-Burns State Park) consisting of removing 4,516 exotic trees (eucalyptus) and shrubs near environmentally sensitive habitat and on slopes exceeding 30% at Julia Pfeiffer-Burns State Park in the Big Sur Coast Land Use Plan.
b. On January 13, 2004, the Big Sur Land Use Advisory Committee voted 6-0 to recommend approval of the proposed Coastal Development Permit (PLN030620).
c. On March 8, 2004, an initial study/draft mitigated negative declaration was distributed to responsible agencies and interested parties including the State Clearinghouse (SCH#: 2004031045) in accordance with the California Environmental Quality Act (CEQA). The comment period for this document was from March 10 to April 13, 2004.
d. On April 14 and May 12, 2004, the Planning Commission held duly noticed public hearings on the proposed project (PLN030620/Julia Pfeiffer-Burns State Park). The Commission voted 6-2 to approve PLN030620/Julia Pfeiffer-Burns Park (Resolution #: 04019).
e. On May 28, 2004, Joseph P. Schoendorf and Friends of the Big Sur Coast filed an appeal of the Planning Commission decision on PLN030620.
f. A hearing scheduled and noticed for July 13, 2004 was continued at the request of the appellant. On August 24, 2004, the Monterey County Board of Supervisors pursuant to regulations established by local ordinance and State law, considered, at a public hearing, an application for a Coastal Development Permit (PLN030620/Julia Pfeiffer-Burns State Park) in the Big Sur Coastal Land Use Plan area and adopted a resolution of intent to approve the project with amended conditions requiring a restoration plan to remove all trees from the slope below the Waterfall House and for the applicant to pay fees even though they qualify for an exemption as a State Agency.
g. On September 14, 2004, the Monterey County Board of Supervisors continue the item with direction to revise findings and conditions approving a Coastal Development Permit (PLN030620/ Julia Pfeiffer-Burns State Park) in the Big Sur Coastal Land Use Plan area.
h. On September 28, 2004, the Monterey County Board of Supervisors considered revised findings and conditions. The Board approved a Coastal Development Permit (PLN030620/ Julia Pfeiffer-Burns

Table with 3 columns: California Coastal Commission logo, Monterey County Final Local Action, and Exhibit 4 (page 1 of 19) JPBSP Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a

State Park) in the Big Sur Coastal Land Use Plan area subject to revising conditions to clarify hauling or chipping of all trees removed as part of this project (Condition 9) and to not double the permit fees (Condition 11).

2) **FINDING – CONSISTENCY:** The Project, as conditioned, is consistent with applicable plans and policies, Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for residential development.

EVIDENCE:

(a) Land Use. Julia Pfeiffer-Burns State Park extends over 3,762 acres along the Big Sur coast. This Park stretches along both sides of Highway One generally between Partington Point/Creek on the north end and the John Little State Reserve on the south end. The landscape maintenance project would take place within a 35-acre portion of the park located around the Waterfall House (Lathrop and Helen Hooper Brown) and South Garden above McWay Cove.

(b) Zoning. The park is zoned Watershed Scenic Conservation with a 40 acre minimum lot size [WSC/40(CZ)] and Open Space Recreation with a Design Control Overlay [OR-D(CZ)], Coastal Zone (CZ).

(c) Plan/Code Conformance. The Planning and Building Inspection Department staff reviewed the project, as contained in the application and accompanying materials, for conformity with the:

- (1) Big Sur Coast Land Use Plan
- (2) Monterey County Coastal Implementation Plan - Part 3 (Chapter 20.145); and
- (3) Monterey County Coastal Implementation Plan – Part 1 (Zoning Ordinance - Title 20), which establishes regulations for:
 - Watershed Scenic Conservation (Chapter 20.17).
 - Open Space Recreation (Chapter 20.38).
 - Design Control (Chapter 20.44).
 - Development on Slopes in excess of 30% (Chapter 20.64.230).
 - Development in Environmentally Sensitive Habitat (Chapter 20.66.020).

With the recommended conditions, there would be no conflict or inconsistencies with the regulations of these plans or policies. These conditions generally require mitigation above what is designed into the project in order to address specific policy thresholds related to visual resources, environmentally sensitive habitat, and hazards as detailed in the following findings and evidence.

(d) Permits. Although removal of exotic vegetation such as eucalyptus trees and pampas grass is not regulated and is encouraged under the Big Sur land Use Plan, Coastal Development Permits are required since tree removal is considered development and development on slopes in excess of 30% and/or within 100 feet of environmentally sensitive habitat are non-exempt types of development.

(e) Visual Resources. Removal of non-native trees (e.g. eucalyptus) as part of resource management is an exception to the critical viewshed regulations provided such removal does not result in exposing structures within the critical viewshed (Section 20.145.030.B.8 CIP). About ½ of the trees scheduled for removal along the coast line have already been removed and some of these trees were felled on a slope below the Waterfall house. Although the Waterfall House is not visible and the removal has improved the public view of the coastline in this area, the trees on the slope detract from the view of the bluff below. Trees felled on the slope below the Waterfall House must be removed and replaced with native vegetation so that the view from the ocean is preserved (Condition 9).

(f) Environmentally Sensitive Habitat (ESHA). As conditioned, the proposed project is consistent with regulations for development adjacent to environmentally sensitive habitats (Section 20.145.040 CIP). The following biological assessments were prepared for the subject site in accordance with Section 20.145.040.A CIP:

- (1) Letter Regarding Eucalyptus Removal at Julia Pfeiffer-Burns State Park. Prepared by John Gilchrist, Restoration Ecologist/Licensed Erosion Control Specialist, John Gilchrist & Associates. February 28, 2003.
- (2) Biological Assessment Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. May 15 2003.

- (3) Report for Smith's Blue Butterfly and Monarch Overwintering Habitat. Prepared by Richard A. Arnold, Pd.D., Entomological Consulting Services, Ltd. November 11, 2003.
- (4) Resource Management Plan, Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. April 5, 2003 and updated December 4, 2003.
- (5) Letter from State Parks Department in response to Gilchrist letter. Prepared by Tom Moss, Senior State Parks Resource Ecologist. January 30, 2004.
- (6) Memorandum from State of California Department of Fish and Game. Comments on proposed project prepared by Robert W. Floerke, Regional Manager. January 23, 2004.

Although buckwheat plants and eucalyptus trees themselves are not protected, they provide habitat for Smith's blue and Monarch butterflies respectively. In addition, some trees scheduled for removal are located closer than 100 feet from riparian corridors. The various reports submitted and reviewed have established some guidelines to avoid significant impact to any sensitive habitat/species. Proposed removal of exotics and revegetation with native plants will enhance the natural conditions for this area. As a public park, the site does not require a conservation easement (20.145.040.B.2 CIP) to preserve these areas.

(g) Hazardous Area. The site is located in a high hazard zone for Fire and erosion according to Resource Maps, of the Monterey County Big Sur Coast Land Use Plan. Technical reports have been provided with recommended conditions and modifications that provide additional assurances regarding project safety:

- (1) Erosion Control Plan, Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. December 5, 2003.
- (2) Forest Maintenance Plan, Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. December 3, 2003.

The proposed project is consistent with policies of the Big Sur Coastal Implementation Plan dealing with development in hazardous areas (Section 20.145.080 CIP).

(h) Land Use Advisory Committee: The Big Sur Coast Land Use Advisory Committee voted 6-0 to recommend approval of the project with two conditions/changes:

- All exotics (landmark and historic) should be considered for eventual removal. This is currently not part of the project proposed by State Parks. The County could entertain this recommendation if State Parks makes this part of a project future.
- A clear monitoring and follow-up maintenance program should be defined and implemented (Condition 8).

LUAC meeting minutes dated January 5, 2004.

(i) Site Visits. Coastal Commission staff conducted a site visit in response to a violation complaint and determined that the matter was within the jurisdiction of the County. County staff conducted on-site inspections to review impacts from work that was completed in September 2002 and that the subject parcel conforms to the plans listed above. A follow up visit in June 2004 verified that no trees have moved on the slope.

(j) Application. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN030620. Staff notes are provided in Project File PLN030620 and PD020094.

3) **FINDING – SITE SUITABILITY**: The site is physically suitable for the proposed use.

EVIDENCE:

(a) Site Inspection. The project planner conducted an on-site inspection to assess work completed prior to issuance of a permit and remaining work to be completed.

(b) Agency Review. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Agriculture Commissioner, Parks Department, and Environmental Health Department. The project has also been reviewed by California Department of Forestry (CDF), Department of Fish and Game, and Coastal

Commission. There has been no indication from these agencies that the site is not suitable. Conditions recommended by these agencies have been incorporated to the project conditions.

(c) Professional Reports. Reports by a certified Ecologists and an Entomologist indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the proposed project.

4) **VIOLATION**: The subject property is not in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. A violation exists on the property; however, if approved, the proposed project will remove the violation. Zoning violation abatement cost, if any, have been paid.

EVIDENCE:

(a) Monterey County Code Section 20.90.130 requires restoration of land before an application is deemed complete. The Director of Planning and Building Inspection may require restoration of the property to its pre-violation state if it is found necessary to correct the violation.

(b) Coastal Commission Letter. On October 4, 2002, the California Coastal Commission issued a letter to State Parks staff indicating that development consisting of tree removal had occurred at Julia Pfeiffer-Burns State Park. This letter notes that although tree removal is considered development, removal of eucalyptus trees is exempted. However, a decision of this specific project is exempted is subject to County interpretation. The Coastal Commission referral of this matter to the County implies that there was no violation for areas under their jurisdiction (e.g.; inter-tidal zone).

(c) On October 9, 2002, County staff notified the property owner, State Department of Parks and Recreation (State Parks), of a violation (PD020094). Per direction, State Parks halted work and began working with County staff. Due to their responsiveness and willingness to work with staff, no violation was formally recorded against the property. An application for the project was submitted on December 5, 2003 (PLN030620).

(d) Gilchrist Letter. On February 28, 2003 Mr. John Gilchrist, ecologist hired by a neighboring property owner, submitted a letter to the County identifying multiple potential impacts to the environment that may have/would occur as a result of the tree removal portion of this project.

(e) For erosion control, the applicant was required to replant the areas where trees were removed. The County did not require removal of felled trees on slopes until the matter has been fully evaluated because work could create environmental and/or erosion damage. Since full restoration in this case would involve adding invasive plants where the Big Sur Land Use Plan encourages their removal, staff allowed the application to proceed to hearing for consideration by the Planning Commission. Approval by the Planning Commission included allowing trees to remain on the slope, and this action was appealed to the Board of Supervisors.

(f) Approval of PLN030620 will remove any violation from the subject property. These permits apply as appropriate to after-the-fact development consisting of removing approximately 2,000 exotic plants. Condition 8 requires the applicant to restore the site in compliance with all applicable requirements of the Big Sur Coastal Implementation Plan Chapter 20.145 of Title 20.

(g) Although, the Director of Planning and Building Inspection has the authority to exempt State Agencies from paying County fees, the Board of Supervisors directed staff to require fees for permits and mitigation monitoring (Condition 11).

5) **FINDING – CEQA/MITIGATED NEGATIVE DECLARATION**: On the basis of the whole record before the Board of Supervisors there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

EVIDENCE:

(a) Background. This project is part of a larger "Big Sur Native Landscape Recovery Project" that received an Environmental Enhancement Mitigation Program grant administered by the State of California Resource Agency. This grant is specifically directed towards subduing the invasion of exotic pest plants which threaten the ecological and scenic integrity of the Big Sur coast. Prior to beginning work at Julia Pfeiffer-Burns Park, State Parks staff completed a detailed project plan in April 2002

("Waterfall House Landscape Maintenance Project") and filed a Notice of Exemption (Class 1/Section 15301, Categorical Exemption) on June 4, 2002.

(b) Although there was no opposition presented in response to the exemption, County staff determined that the development permits required by the County were not exempt and an initial study would be prepared. Monterey County Planning and Building Inspection assumed Lead Agency for this process.

(c) Gilchrist Letter. Mr. John Gilchrist (an ecologist hired to represent an outside interest) prepared a letter (dated February 28, 2003) identifying a number of environmental concerns resulting from the Phase I work completed in September 2002. The initial study prepared for this project addresses the following issues raised by Mr. Gilchrist:

(1) Seacliff buckwheat (understory) and Smith's blue butterfly. A report was prepared by Richard A. Arnold, Ph.D, president of Entomological Consulting Services to address this concern. The report finds that the buckwheat habitat was limited since the trees removed and scheduled for removal shade the understory and the buckwheat plants need exposure to direct sunlight. In addition the Smith's blue butterfly is cold blooded and needs sunlight to warm up and be active. Therefore, Mr. Arnold concludes that it is unlikely that Smith's Blue occurred in this area and that the proposed project will improve the overall habitat quality. The California Department of Fish and Game (DFG) also reviewed the materials associated with the proposed project. Mitigation Measure #3 (Condition 7) provides protection of existing buckwheat plants as recommended by DFG.

(2) Monarch butterfly that use eucalyptus to roost during winter migration. A report was prepared by Richard A. Arnold, Ph.D, president of Entomological Consulting Services to address this concern. The report finds that clusters of Monarchs were previously observed at a eucalyptus grove east of the project site in McWay Canyon, but this grove of trees was removed once in 1984 and again in 1999. Since then Monarchs have not been seen on this site or within the project site despite surveys by various biologists. The location of the trees felled in September 2002 were located along the coastal bluff. Since this condition provided no protection from topography or other vegetation and exposed these trees, Monarchs were not likely to use them as over-wintering roosts.

(3) Raptor nests in tall eucalyptus trees. The California Department of Fish and Game (DFG) found that tree removal is scheduled to commence in June 2004, which is the bird nesting season (March 1- July 31 annually). The program includes having a qualified biologist survey the trees for nests prior to commencing removal. If nests are found, the program notes that those trees will not be disturbed until the birds have fledged. Condition 6 (Mitigation Measure 2) provides added protection since tall trees such as eucalyptus are difficult to survey. DFG's preference would be to remove trees outside of the nesting season. If this is not feasible due to project funding, DFG has determined that a 150-foot buffer around known nests/trees would be sufficient to reduce impacts.

(4) Intertidal zone, Nearshore Zone, and Marine Resources impacted from sediment and felled trees on slopes that are allowed to reach the ocean. Trees felled on steep slopes above McWay Cove could slide down over time and drift into the ocean. Logs and debris in the near shore environment could adversely impact the organisms and species in this area. The Gilchrist letter notes it is likely trees will reach the intertidal zone. This site was reviewed by Coastal Commission staff in December 2002 shortly following completion of Phase I. Since the intertidal zone is under the Coastal Commission jurisdiction, referring this matter to the County implies that there was no evidence found that damage occurred in any area under their jurisdiction. Site inspections over the next two years have shown no movement in any of the trees. State Parks, applicant, submitted a response to the Gilchrist letter that explains their monitoring program established as part of the project and that new vegetation planted after completion of Phase I has taken hold. Condition 9 (Mitigation Measure 4) requires the applicant to remove trees from the slope and re-vegetate bare areas.

(d) Initial Study. As part of the Monterey County Planning and Building Inspection Department's permit process, staff prepared an Initial Study pursuant to CEQA. This Initial Study identified potentially significant effects to biological resources, but applicant has agreed to proposed project revisions and/or mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The Initial Study is on file in the office of PB&I and is hereby incorporated by reference. (PLN030620/Julia Pfeiffer-Burns State Park). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

(e) Mitigated Negative Declaration. On March 8, 2004, County staff completed an Initial Study for the project (PLN030620/Julia Pfeiffer-Burns State Park) in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provides substantial evidence that the project, with the addition of Mitigation Measures, would not have significant environmental impacts. A Mitigated Negative Declaration was filed with the County Clerk March 10, 2004, noticed for public review, and circulated to the State Clearinghouse from March 10, 2003 to April 13, 2004. On May 4, 2004, the IS/MND was revised in response to comments; however, the changes involved clarification and amplification of the existing analysis so the IS/MND was not re-circulated. The evidence in the record includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

1. Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park, Photographic History (1929-2003). Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. May 20, 2003.
2. Letter Regarding Eucalyptus Removal at Julia Pfeiffer-Burns State Park. Prepared by John Gilchrist, Restoration Ecologist/Licensed Erosion Control Specialist, John Gilchrist & Associates. February 28, 2003.
3. Biological Assessment Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. May 15 2003.
4. Report for Smith's Blue Butterfly and Monarch Overwintering Habitat. Prepared by Richard A. Arnold, Pd.D., Entomological Consulting Services, Ltd. November 11, 2003.
5. Forest Maintenance Plan, Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. December 3, 2003.
6. Resource Management Plan, Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. April 5, 2003 and updated December 4, 2003.
7. Erosion Control Plan, Waterfall House Landscape Maintenance Project Julia Pfeiffer-Burns State Park. Prepared by Thomas K. Moss, Senior State Park Resource Ecologist, Monterey District. December 5, 2003.
8. Memorandum from State of California Department of Fish and Game. Comments on proposed project prepared by Robert W. Floerke, Regional Manager. January 23, 2004.
9. Email correspondence from Monterey County Agricultural Commissioner. Comments on proposed project by Robert Roach. December 16, 2003.
10. Letter from State Parks Department in response to Gilchrist letter. Prepared by Tom Moss, Senior State Parks Resource Ecologist. January 30, 2004.

11. Natural Heritage Stewardship Program Resource Management Plan Grant Application. Plant Community Restoration – Exotic Species Control. Prepared by Ken Gray, District Ecologist. September 1993.

The Board of Supervisors determines that although the project could have significant impacts, mitigation can reduce these potential impacts to a level of insignificance. Therefore, a Mitigated Negative Declaration is hereby adopted by the Board of Supervisors.

(f) Mitigation Monitoring Program. A Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. The applicant/owner must enter into an “Agreement to Implement a Mitigation Monitoring and/or Reporting Plan” as a condition of project approval.

(g) Comments. One comment letter was received on April 13, 2004 and these issues were also verbally expressed at the Planning Commission hearing on April 14, 2004. The IS/MND was revised on May 4, 2004 in response to these comments. The County considered these comments and responds as follows:

INTRODUCTION. The project description identifies the entitlements required by the County. The Summary of Environmental Evaluation clearly states that the Initial Study/Mitigated Negative Declaration (IS/MND) addresses after-the-fact impacts from work already completed in addition to impacts from work proposed for Phase II identification of trees felled on slopes. Therefore, the IS/MND adequately identifies and assesses the whole project.

FAIR ARGUMENT. State Parks prepared a Categorical Exemption for the project when they applied for funding. There were no comments submitted on the project at that time and a Notice of Exemption was filed in accordance with CEQA. Monterey County required an initial study as a result of the February 2003 letter submitted by Mr. Gilchrist. This letter identified a controversy and included qualified expert opinion that needed to be assessed. The applicant provided additional information to assess the issues raised in the Gilchrist letter. Documents submitted by State Parks, applicant, were peer reviewed by experts from the Department of Fish and Game and Agricultural Commissioner. In addition, Coastal Commission and US Fish and Wildlife staff were consulted through the process and had no comments in response to the County’s Notice of Intent to adopt a Mitigated Negative Declaration.

The April 2004 letter by Mr. Gilchrist reiterates potential impacts that are identified in the IS/MND. There is nothing in the Gilchrist letters that suggests the impacts from either Phase I (after-the-fact) or Phase II have/can not be mitigated. There is substantial evidence in the record that all impacts can be mitigated to a level of insignificance and that the applicant has agreed to mitigation and/or modifications to the project that reduce impacts to a point where clearly no significant adverse impact would occur. This constitutes a disagreement among experts and Section 15151 of CEQA determines such disagreement does not make the document inadequate. The document is adequate, complete and has made a good faith effort at full disclosure. As conditioned and mitigated, the project meets the policies of the Big Sur Land Use Plan that establish the thresholds of significance. After reviewing all of the available materials, including the April 2004 letter from Mr. Gilchrist, the Monterey County Board of Supervisors conclude that the project does not meet the test for requiring an EIR pursuant to Section 15064 CEQA.

BIOLOGICAL IMPACTS. Although state and local agency staff are considered experts under CEQA, they are not included on the County list because they are not available for hire by private citizens. As a State Agency with qualified experts in ecology, State Parks prepared their own documents (Biological, Forest Management, Erosion Control, etc.). In the case of the entomology report, this was prepared by an outside expert and not by State Parks staff. All of the documents were peer reviewed by other agencies such as the Department of Fish and Game, Coastal Commission, Water Resources Agency,

Environmental Health, Department of Forestry, and the County Agricultural Commissioner. Although the project documents were forwarded to the US Fish and Wildlife Service, we have not received any written response (pro or con). Conditions and mitigations recommended by these agencies have been incorporated.

SMITH'S BLUE BUTTERFLY. The buckwheat plant itself is not endangered. Common practice allows removal of such plants provided the butterflies are not present and replacement is provided at a 1:1 ratio (minimum). The period to avoid removal or dust nearby the host plants is between June 1st and August 15th of each year. Phase I work occurred in September after the Smith's blue butterfly would have been present. Although the opponents identify a handful of plants that may have been impacted, the applicants have installed 115 new buckwheat plants as part of their re-vegetation program following the Phase I work. This is clearly much higher than a 1:1 replacement ratio. Based on substantial evidence in the record, there is no fair argument to suggest that a significant impact did or will occur as a result of any part of this project.

MONARCH BUTTERFLY. The applicant hired an entomologist to assess this situation. This report concludes that there was/is no significant impact by removing the eucalyptus trees. The eucalyptus tree itself is not endangered, but is viewed as a source of habitat for Monarch butterflies. The Big Sur Land Use Plan policies establish a threshold of significance that encourages removal of eucalyptus trees. As such, removal is allowed provided the trees are removed when the butterflies are not present. Replacement for removal is not generally required since this is an invasive, non-native plant for this area. Monarch butterflies have proven their ability to adapt by moving into eucalyptus groves that were not there before and would be able to find other groves to roost if these trees are removed. Based on substantial evidence in the record, there is no fair argument to suggest that a significant impact did or will occur as a result of any part of this project. If this project was not on 30% slope or near riparian habitat, no County permit would be required. This is supported by a letter from the California Coastal Commission.

INTER-TIDAL. Aerial photos taken prior to Phase I show that this slope did not have much vegetation prior to the Phase I work. This was likely due to the steep grade of the slope. The IS/MND acknowledges trees were felled onto this slope and the potential impact to the inter-tidal area if any logs reach the water. After two years of monitoring during the application process, none of these trees have moved. Without direct evidence, further analysis of inter-tidal impacts would be speculation and there would be no nexus for mitigation (Section 15145 CEQA). In order to address this issue, the applicant is conditioned to prepare a Restoration Plan that addresses removing the trees and that bare areas on the slope will be replanted (Mitigation Measure 4/Condition 9). As mitigated, this will clearly avoid any impact to the tidal area as well as reduce impact on the slope.

GEOLOGY. This plan was reviewed and accepted by the County Water Resources Agency, the Agricultural Commissioner, and State Fish and Game. Condition 8 requires landscaping to be installed in accordance with the project's Resource Management Plan/Maintenance Plan.

HYDROLOGY. This condition currently exists with debris from all the eucalyptus trees in the area. Removing the trees and the method proposed for the tree removal does not add eucalyptus foliage beyond pre-project (pre-Phase I) conditions. Therefore, this project would not create any adverse impact on beach inter-tidal organisms. By removing the trees, this condition will improve over time.

FAILURE TO ADDRESS IMPACTS FROM REMOVAL OF TREES ALREADY FELLED. The IS/MND does in fact address impacts of trees already felled. Review of the whole record, and consultation with agencies such as Fish and Game as well as the Coastal Commission found no evidence that any logs already felled had created any impact. The Gilchrist letter states this may create an impact if it did occur and the IS/MND reflects this observation. However, the IS/MND determines that based

on the record as a whole, this impact is mitigated through monitoring as noted in the inter-tidal response above.

All comments received on the IS/MND have been considered in a revised IS/MND dated May 4, 2004. No issues remain.

(h) Public Testimony. The Planning Commission considered public testimony and the initial study at hearings on April 14 and May 12, 2004.

6) **FINDING - FISH & GAME FEE**: For purposes of the Fish and Game Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends.

EVIDENCE:

(a) De Minimus Finding. The site includes: five rare plant communities; five plant plus 24 animal taxa of special concern; and riparian corridors in three major creeks. Biological assessments determine that there is no potential change because the habitats are degraded due to the invasion of exotic plants. The proposed tree removal and replanting is designed to improve the resources listed A-G listed above as reviewed and agreed by the State Department of Fish and Game and the U.S. Department of Fish and Wildlife. Although potential impacts are for the overall good of the environment, there is no exemption to the De Minimus Finding and the project is subject to the required fee.

(b) Initial Study and Negative Declaration contained in File No. PLN030620/Julia Pfeiffer-Burns State Park.

7) **FINDING - PUBLIC ACCESS**. The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). The proposed project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 and Section 20.145.150 of the Big Sur Coastal Land Use Plan and Coastal Implementation Plan.

EVIDENCE:

(a) Part of the site is located seaward of the first public road (Highway One). Public access to, and along, the water edge exists within the Julia Pfeiffer-Burns State Park. Said access areas will not be impacted by the propose project. Visual access will be greatly improved with completion of this project.

8) **FINDING - APPEAL**: An appeal of the May 12, 2004 action of the Planning Commission, approving a Combined Development Permit (PLN030620/Julia-Pfeiffer-Burns Park) was timely filed on May 28, 2004 and was timely brought to public hearing before the Board of Supervisors on July 13, 2004 and continued to August 24, 2004 at the request of the appellant.

EVIDENCE:

The property that is the subject of this appeal is Julia Pfeiffer-Burns State Park, located along Highway One approximately 11.5 miles south of the Big Sur Post office near mile marker 36, Big Sur (Assessor's Parcel Number 420-021-007-000, 420-021-022-000, 420-021-033-000, 420-021-034-000, 420-021-020-000, 420-011-027-000, 420-221-013-000 And 420-221-020-000), in the County of Monterey ("the property").

a. In December 2003, State Parks filed with the County of Monterey an application for a Coastal Development Permit to implement a Landscape Maintenance Plan that includes removing 4,516 exotic trees and shrubs from "the property."

b. Monterey County Planning Commission approved the project on May 12, 2004 (Resolution No. 04019).

c. Mr. Joseph Schoendorf and Friends of the Big Sur Coast filed an appeal from the decision of the Planning Commission on the grounds that (1) there was a lack of fair or impartial hearing; (2) the findings, conditions, or the decision of the Planning Commission were not supported by the evidence; and (3) that the decision was contrary to law. Said appeal was filed with the Clerk of the Board of Supervisors within the time prescribed by Monterey County pursuant to Zoning Ordinance Chapter 21.80.

d. Said appeal was determined to be complete and filed within the allowable time.

e. Minutes and other records of the Planning Commission meetings of April 14, 2004 and May 12, 2004, in the files of the Planning and Building Inspection Department.

f. Minutes and other records of the Board of Supervisors' meetings of July 13, 2004, in the files of the Clerk of the Board of Supervisors and Planning and Building Inspection Department.

9) **FINDING:** Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony and other evidence presented before the Board of Supervisors, the Board denies the appeal and approves the project (PLN030620/Julia Pfeiffer-Burns State Park), based on the following responses to appellant's contentions:

Overview of Appeal:

Mr. Joseph Schoendorf and Friends of the Big Sur Coast appeal the May 12, 2004 decision of the Planning Commission to approve State Parks request to remove 4,516 exotic trees and shrubs from the Julia Pfeiffer-Burns State park, located along Highway One, Big Sur. This appeal is brought on the basis that there was a lack of a fair and impartial hearing, the Planning Commission's decision was contrary to law, and The Planning Commission's Findings and Decisions are not supported by the evidence (Resolution No. 04019) in that:

- *The project description is inaccurate, and therefore, approving the project with a mitigated negative declaration is also inaccurate.*
- *The project has not met the same exacting environmental standards that other private applicants would be subjected to if they did the same work.*
- *It is not suitable to leave large eucalyptus tree trunks on a slope.*
- *Findings are inconsistent with adoption of a Mitigated Negative Declaration.*
- *Proper analysis of sensitive habitat, wildlife and vegetation areas has not been conducted.*

A complete copy of the appeal as it was filed with the Clerk to the Board on May 28, 2004 is hereby incorporated herein to this resolution by reference as Exhibit B.

LACK OF FAIR OR IMPARTIAL HEARING

The Monterey County Board of Supervisors interprets this part of the appeal to generally include two issues:

1. *Project Description. The project description is inaccurate, and therefore, approving the project with a mitigated negative declaration is also inaccurate. The fact that "several hundred" trees were pushed over the side of the cliff should be part of the project description.*
2. *Preferential Treatment. The Department of Parks and Recreation received preferential treatment and "no person but this particular applicant could hope to get such an outrageous permit." They note that "if the County can identify four other applicants who would get such a permit, appellants would be happy to drop this ground for appeal."*

EVIDENCE (RESPONSE):

(a) Project Description. The project description is a request for a Coastal Development permit to implement a "Waterfall House Landscape Maintenance Plan" that includes removing 4,516 exotic, invasive plants (trees and shrubs), of which approximately half have already been removed. Some work has/will take place on slopes exceeding 30% and within 100 feet of environmentally sensitive habitat. The fact that some trees were felled and would remain on a slope was identified and analyzed in the mitigated negative declaration (MND). Staff did not find it necessary to distinguish how many trees would be chipped, cut for fire wood, etc in the project description itself since the record as a whole accurately provides all the information needed to understand the scope of the project and all aspects have been fully evaluated. The Board has conditioned the project to include removing all felled trees from the slope. (See Finding 5 of this Resolution)

(b) Preferential Treatment. Although staff concluded that allowing the trees felled on the slope to remain and collecting them if they slide down near the beach would create less disturbance and/or erosion impact, the Board has adopted a condition for these trees to be removed and a Restoration Plan implemented. Acknowledging that buckwheat plants may have been impacted, the project includes planting numerous buckwheat plants in areas that have been disturbed. This is consistent with how staff has treated property owners in other violation cases such as Mayer (PLN010331), Kleissner (010280),

Kitaji (PLN020357), and Waters (PLN040055). In these cases, certain road improvements such as culverts have been allowed to remain in place and obtain necessary permits where staff determined that removing the improvement would cause greater damage/impact. In all cases the potential and after-the-fact impacts were assessed through a mitigated negative declaration. A notice was not recorded against the subject property because State Parks complied with staff's direction to stop work, they submitted an application in response to the violation notice, and they continued to process the application in a timely manner. Approval by the Planning Commission, and Board on appeal, clears the violation.

(c) Previous Findings.

FINDINGS/DECISION NOT SUPPORTED BY EVIDENCE

The Monterey County Board of Supervisors interprets this part of the appeal to generally include four issues relative to the Mitigated Negative Declaration:

1. *Buckwheat/Smith's Blue Butterfly. The appellant states that there is fair argument that removal of buckwheat plants caused by the project may significantly impact the endangered Smith's Blue butterfly and a MND is not supported by the evidence.*
2. *Eucalyptus/Monarch Butterfly. The appellant states that there is fair argument that removal of eucalyptus trees caused by the project may significantly impact what has been identified in the past as an overwintering site for the Monarch butterfly and a MND is not supported by the evidence.*
3. *Intertidal Zone. The appellant states that there is fair argument that logs may have slid down the slope into the ocean and battered the rocks and associated organisms. Since no study was prepared for the Underwater Park impacts, a MND is not supported by the evidence.*
4. *Debris/Erosion/Water Quality. The appellant states that there is fair argument that trees felled on the slope had caused erosion and will take decades to break down. Plant toxins that are given off by eucalyptus foliage prevent growth of native plants. Since the erosion and toxin will runoff into the ocean, a MND is not supported by the evidence.*

EVIDENCE (RESPONSE):

- (a) Buckwheat/Smith's Blue Butterfly. The MND identifies that a number of buckwheat plants may have been impacted. However, the project also consists of re-vegetating disturbed areas with native vegetation that includes replacement buckwheat plants. The buckwheat plant itself is not endangered, so removing plants is allowed subject to replacement. A standard replacement ratio is 1:1 and the project has re-vegetated disturbed areas at a ratio of approximately 4:1. An entomologist report supports a finding that with replacement plants there is no significant impact.
- (b) Eucalyptus/Monarch Butterfly. The MND acknowledges that eucalyptus trees can serve as an overwintering site for Monarch butterflies. An entomologist report references a number of prior studies for Monarch butterflies using this area. Based on all the previous studies there is evidence that butterflies used trees further up the valley from the project area, but that the subject trees are too exposed to wind to support the necessary overwintering habitat. Staff discussions with Ventana staff, who have studies this in detail, determined that the trees in this area were used as a temporary stop for a few butterflies but the trees here have not been used as an overwintering site.
- (c) Intertidal Zone. Staff finds that aerial photos show that this slope did not have much vegetation prior to the Phase I work due to the steep grade of the slope. The MND acknowledges trees were felled onto this slope and the potential impact to the inter-tidal area if any logs reach the water. Pictures from the appellant's ecologist show that some logs did reach the beach and discussion with State Parks and California Coastal Commission staff that these trees were removed prior to entering the ocean. A site visit and photos taken two years later shows that none of the logs on the slope have moved and the vegetation planted by State Parks has grown over these trees. This information is all part of the record as a whole. Staff determined that there is no evidence to indicate there has been any logs that reached the water and/or created an impact. In order to address this issue for future logs and to reduce aesthetic impacts, the project is conditioned to remove all logs from the slope with a Restoration Plan for the slope.

(d) Debris/Erosion/Water Quality. The MND concludes that removing all the trees from the slope could create a significant impact by uncovering bare soil on a steep slope that could then erode into the ocean as stated by the appellant. Mitigation requires that bare areas on the slope are replanted if/when a log slides down the hill. The amount of duff from the removed eucalyptus trees leeching toxins is insignificant given the fact that there was significant duff existing from the trees before the project took place. The Board, on appeal, conditioned the project to include removal of all trees from the slope area. The project as a whole, and as mitigated, will improve the water quality.

(e) *Finding 5*.

DECISION WAS CONTRARY TO LAW

The appellants contend that "it is impossible to maintain that 'clearly no significant effect on the environment' has occurred or will occur based on the photographs they submitted. If the record supports a "fair argument" that a project may have a significant effect on the environment, then an environmental impact report (EIR) must be prepared.

EVIDENCE (RESPONSE):

(a) The basic purposes of CEQA(Section 15002) are to:

- Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.
- Identify the ways that environmental damage can be avoided or significantly reduced.
- Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

Although no responsible agencies have expressed any concerns over the proposed project, letters from the appellant's ecologist present a fair argument that impacts could exist. This is expressed in the MND, which also identifies mitigation measures to reduce impacts to a level of insignificance. Professional reports submitted with the project, project plans, and mitigation measures support adoption of a MND for both potential and after-the-fact impacts. There is nothing in any of the documentation submitted by the appellant that supports a claim that the potential impacts cannot be mitigated to a level of insignificance.

(b) The "fair argument" test must provide "substantial evidence" that contradicts the findings made in the MND. Letters submitted by the appellants consulting ecologist identify potential impacts that could occur and these issues have been reviewed and evaluated by staff from County and State agencies including, but not limited to:

- Dept of Fish and Game (Memo 01/23/2004). DFG agrees with the entomologist report (that is contested for accuracy by the appellant) and recommend actions that were incorporated into the project as mitigation measures. This memo also notes that a 150-foot buffer for raptors is sufficient, contrary to a claim by the ecologist hired by the appellant.
- County Agricultural Commissioner (email 12/16/2003). The Commissioner's office reviewed all the material and talked to the applicant. They found their plan to be excellent since it will remove many exotic plants that will benefit their countywide Weed Management Area. They found the applicant will be using herbicides appropriately, have good restoration plans, and a long-term maintenance strategy to prevent re-invasion by exotic plants.
- Coastal Commission (letter 10/04/2002). In response to a violation complaint when Phase I occurred, the Coastal Commission referred the matter to the County to determine if the project qualifies as development. This letter implies they found no violation relative to the beach or ocean, as alleged by the appellant, where they retain jurisdiction.

(c) The impacts noted by the appellant's ecologist have been identified, analyzed and mitigated to a level of insignificance (*Finding 5*).

SPECIFIC REASONS FOR DISAGREEMENT

Finding #1-Consistency with Plans. The project has not met the same exacting environmental standards that other private applicants would be subjected to if they did the same work. This allegation is based on the fact that the applicant had one of their staff prepare the professional reports and this person is not on the County's approved list.

Finding #2-Site is Physically Suitable. It is not suitable to leave large eucalyptus tree trunks on the slope.

Finding #3-Violation. The violation is not removed and the applicant did not pay any penalties.

Finding #4-CEQA. Refers to prior discussion.

Finding #5-Fish and Game Fee. Appellant notes that this finding is inconsistent with a MND.

Finding #6-Public Access. The CIP requires project analysis of sensitive habitat, wildlife and vegetation areas. Appellant contests that proper analysis has not been conducted.

EVIDENCE (RESPONSE):

(a) Finding #1-Consistency with Plans. A permit is required in this case due to development taking place on slopes and near ESHA. Policies allow the County to issue such a permit provided the action better meets the objectives of the Land Use Plan. The Big Sur Local Coastal Program encourages removal of exotic vegetation such as eucalyptus and improving/preserving views along the Big Sur coast. Removing the trees open the view of the coastline that has been obscured because of planting such an invasive plant species like eucalyptus. The County's approved consultant list is provided to assist residents in selecting a qualified consultant. State and local employees are not on the County's approved list of consultants because we are not for hire by the private community. Staff accepted biological and ecological reports from State Parks as agency that is known to have qualified technical expertise in the areas in question (biology, ecology). This is common practice for any state or local agency; however, staff went an extra step to have the Department of Fish and Game (DFG) peer review the reports presented by State Parks.

(b) Finding #2-Site is Physically Suitable. See prior Findings.

(c) Finding #3-Violation. An initial complaint was filed with the Coastal Commission. They found no violation under their jurisdiction so they referred the matter to the County. By receiving approval from the County, the applicant has addressed the violation. The Board has assessed fees for permits and mitigation monitoring. Although State Agencies can be exempted from County fees, the Board has assessed fees due to starting work without a permit. The Board has also directed the applicant to remove all trees from the slopes below the Waterfall House.

(d) Finding #4-CEQA. No response required.

(e) Finding #5-Fish and Game Fee. This finding is required to determine if a fee is required for the Department of Fish and Game (DFG). The fee for a MND is different (higher) from the fee for an EIR. DFG reviewed the project and recommended mitigation measures that have been incorporated in the MND. Although the project benefits the environment, there is no exemption and the County assessed the MND fee since the project involved biological resources that were reviewed by DFG.

(f) Finding #6-Public Access. Removal of the trees improves the visual access of the Big Sur coastline from Highway One. The technical reports, staff reports, MND and supporting documentation has assessed the potential impacts from to project including after-the-fact impacts for trees that have been felled. This project has been reviewed and evaluated by staff from County and State agencies including, but not limited to, DFG, the Agricultural Commissioner, and the Coastal Commission.

(g) Previous Findings.

10) **FINDING-COASTAL COMMISSION:** The decision on this project may be appealed to the California Coastal Commission.

EVIDENCE:

(a) Coastal Commission. Section 20.86.080.A of the Monterey County Zoning Ordinance.

DECISION

In view of the above findings and evidence, the Board of Supervisors, adopts the Mitigated Negative Declaration and Mitigation Monitoring Program, and grants the application for a Combined Development Permit (PLN030620/Julia Pfeiffer-Burns Park) subject to 12 conditions as listed in the matrix attached hereto as Exhibit A and incorporated herein by reference.

PASSED AND ADOPTED on this 28th day of September 2004, upon motion of Supervisor Potter, seconded by Supervisor Johnsen, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen, Potter
NOES: None
ABSENT: None

I, Sally R. Reed, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 72, on September 28, 2004.

Dated: October 15, 2004

Sally R. Reed, Clerk of the Board of Supervisors,
County of Monterey, and State of California.

By Ann D. Anderson
Deputy

**Exhibit A - Resolution _____
 Monterey County Planning and Building Inspection
 Condition Compliance and/or Mitigation Monitoring
 Reporting Plan**

Project Name: Julia Pfeiffer-Burns Park

File No: PLN030620

**APNs: 420-021-007, 420-021-022,
 420-021-033, 420-021-034, 420-
 021-020, 420-011-027, 420-221-
 013 and 420-221-020**

Date: September 28, 2004

Approval by: Board of Supervisors

***Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.**

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
1		<p>Combined Development Permit (PLN030620/Julia Pfeiffer-Burns State Park) to replace 4,516 exotic plants (trees and shrubs) with native vegetation near environmentally sensitive habitat and on slopes exceeding 30% within a 35-acre portion of Julia Pfeiffer-Burns State Park around McWay Cove, Big Sur (APN: 420-021-007, 420-021-022, 420-021-033, 420-011-027, 420-021-034, 420-221-013, 420-221-020, and 420-021-020) is in accordance with County ordinances and land use regulations, and subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities</p>	<p>Adhere to conditions and uses specified in the permit.</p>	<p>Applicant/ Owner PBI</p>	<p>Ongoing unless otherwise stated</p>	

CCC Exhibit 4
 (page 15 of 19 page(s))

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
2		The applicant shall record a notice which states: "A Permit (Resolution # _____) was approved by the Monterey County Board of Supervisors for Assessor's Parcel Number 420-021-007-000, 420-021-022-000, 420-021-033-000, 420-021-034-000, 420-021-020-000, 420-011-027-000, 420-221-013-000 and 420-221-020-000 on September 284, 2004. The permit was granted subject to 12 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use.	Submit proof of recording this notice to PBI.	Applicant/ Owner PBI	Prior to commencing work	
3		The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. The fee for monitoring 1-10 mitigation measures when the action was taken by the Planning Commission is \$4,648.	<p>1) Enter into agreement with the County to implement a Mitigation Monitoring Program and pay the required monitoring fee (\$4,648).</p> <p>2) Fees shall be submitted at the time the property owner submits the signed mitigation monitoring agreement.</p>	Applicant/ Owner PBI	Prior to commencing work	
4		No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection.	None	Applicant/ Owner PBI	Ongoing	

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(page 16 of 19 page)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
5	1	In order to ensure that riparian vegetation is not disturbed during the project, the applicant shall install engineering fence to establish and delineate areas where riparian vegetation exists prior to commencing work	Provide the Director of Planning and Building Inspection with evidence that engineering fence has been installed around riparian habitats within the project area.	Applicant PBI	Prior to tree removal	
6	2	If tree removal is to take place between March 1 and July 31 (annually), a qualified biologist shall identify trees with known bird nests. Prior to commencing work, the applicant shall install a 150-foot buffer zone around said trees using engineer fence	Avoid tree removal between March 1 and July 31 if possible. If this is not feasible, provide the Director of Planning and Building Inspection with evidence that a 150-foot buffer zone is installed around known nests/trees using engineer fence.	Applicant/ Owner PBI	Prior to tree removal	
7	3	In order to protect existing buckwheat plants identified within the project area, the applicant shall flag each plant. If a number of plants are located in close proximity, the area shall be protected using engineer fence.	Flag all existing buckwheat plants within the project area to the satisfaction of the Director of Planning and Building Inspection.	Applicant/ Owner PBI	Prior to tree removal	
8		In order to restore disturbed areas to a native condition and control weeds/exotics during and after development, the applicant shall re-vegetate areas where trees/shrubs are removed in accordance with the Restoration Plan consisting of a Resource Management Plan dated December 4, 2003 and as amended September 28, 2004 plus Monitoring Program dated May 3, 2004 prepared by the State Department of Parks and Recreation.	The applicant shall provide a plan for tree removal and restoration of the slope below the Waterfall House to the Director of Planning and Building Inspection for review and approval. The applicant shall provide reports relative to compliance with the approved Restoration Plan to the Director of Planning and Building Inspection for review and approval. If the Director of Planning and Building Inspection determines that the qualitative measures are not met, the applicant shall take corrective actions within 30 days of notice pursuant to direction from the Director of Planning and Building Inspection.	Owner/ Applicant PBI	Prior to tree removal Monthly during project activity One year following project completion and annually for five years	

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(page 17 of 19 page)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
9	4	The applicant shall haul or chip all trees and plants removed as part of this project including trees felled on the slope area above McWay Cove as part of the Landscape Maintenance Plan to the satisfaction of the Director of Planning and Building Inspection. Areas where trees are removed that become bare shall be re-vegetated with native plants in accordance with the Restoration and Erosion Control Plans (Conditions 8 and 10).	Provide the Director of Planning and Building Inspection with photos and reports of the slope area above McWay Cove. Trees shall be scheduled for removal and the area re-planted as needed prior the beginning of the rain season (October 15 - April 15) to the satisfaction of the Director of Planning and Building Inspection. The report shall evaluate the success of the replanting and recommend additional measures if necessary as determined by the Director of Planning and Building Inspection. The report shall also evaluate the condition and success of the replanting and if more than 30% has failed, additional replacement plants shall be planted for a minimum survival rate of 70% within the first five years.	Applicant/ Owner PBI	Annually for five years from the date of completing planting	YEAR 1 YEAR 2 YEAR 3 YEAR 4 YEAR 5
10		PBD011 - EROSION CONTROL PLAN AND SCHEDULE The approved development shall incorporate the recommendations of the Erosion Control Plan as reviewed by the Director of Planning and Building Inspection. All slopes exposed during the course of development shall be covered, seeded, or otherwise treated to control erosion during the course of development, subject to the approval of the Director of Planning and Building Inspection. The improvement plans shall include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following development and until erosion control planting becomes established. This program shall be approved by the Director of Planning and Building Inspection.	1) Evidence of compliance with the Erosion Control Plan shall be submitted to PBI. 2) Evidence of compliance with the Implementation Schedule shall be submitted to PBI during the course of development until project completion as approved by the Director of PBI.	Owner/ Applicant PBI	Prior to commencing project	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
11		<p>PERMIT FEE (Non-Standard) The public agency applicant shall pay a fee equivalent to the permit fees required for development permits for private entities as allowed in the fee waiver resolution adopted by the Board of Supervisors on August 29, 2000. Said fee amounts to \$9,231.88 for a Coastal Development Permit and Initial Study based on the fee schedule in place at the time the application was submitted (December 5, 2003).</p> <p>PBD012 - FISH AND GAME FEE-NEG DEC/EIR Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee (\$1,250 DFG fee + \$25 recording fee), made out to the "Monterey County Recorder" to be collected by the Planning and Building Inspection Department, within five (5) calendar days of project approval. This fee must be paid prior to the Planning and Building Inspection Department filling a Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid.</p>	<p>Pay to \$9,231.88 to the County of Monterey Planning and Building Inspection Department.</p>	<p>Applicant PBI</p>	<p>Prior to commencing work</p>	
12		<p>PBD012 - FISH AND GAME FEE-NEG DEC/EIR Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee (\$1,250 DFG fee + \$25 recording fee), made out to the "Monterey County Recorder" to be collected by the Planning and Building Inspection Department, within five (5) calendar days of project approval. This fee must be paid prior to the Planning and Building Inspection Department filling a Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid.</p>	<p>Proof of payment (\$1,275) shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first.</p>	<p>Owner/ Applicant PBI</p>	<p>Within five days of final action.</p>	

SECTION IV. Reasons Supporting This Appeal

The California Department of Parks and Recreation (“State Parks”) self-determined that it was exempt from any permitting requirements for cutting down over 4,000 trees and shrubs on the coastal cliffs of Big Sur. The project, in fact, is not just to cut down thousands of trees, but also to toss many of them over the cliff, taking out endangered species habitat in the process, and casting debris on the slopes, the ground and in the surf zone. To be more accurate still, State Parks already has cut down thousands of those trees and tossed them over the cliff, taking out endangered species habitat, and casting debris on the slopes, the ground and in the surf zone. Without the benefit of an Initial Study or a permit, State Parks felled 358 Eucalyptus trees, 1,630 Pittosporums, and 86 Acacias. (11/11/03 Entomological Consulting Services Letter to Tom Moss at 2.)

When Appellants first noticed the massive logs lying on the cliff walls and beach, they brought the tree cutting to Monterey County’s attention. The County quickly determined that a permit was required because the work was on slopes in excess of 30% and was located in an Environmentally Sensitive Habitat Area. The County Planning Commission took no enforcement action, approved an after-the-fact permit for State Parks, and waived any fees. On appeal, the County Board of Supervisors initially ordered State Parks to pay double fees and prepare a Restoration Plan that included the methods for removal of the felled trees. After meeting with State Parks, however, the Board reversed itself, reducing the fees, waiving the plan requirement, and permitting the past and future work. State Parks, by obtaining an after-the-fact permit, has found it more expedient to seek forgiveness than permission.

Unquestionably, no person but this particular applicant could hope to get such an outrageous permit. And yet Monterey County’s Planning Commission and Board of Supervisors unanimously approved the project (half of it after-the-fact) on a mitigated negative declaration, notwithstanding that the massive trees dumped over the cliff ripped through seacliff buckwheat. If anyone other than State Parks had done this, they would be bankrupt with fines, would be subject to the most rigorous environmental review, and would likely be spending time in jail. They would not be permitted for their past work and allowed to do more.

The flaws in this project and its permit are countless. To begin, the project description for the proposed work was inaccurate. “A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost” *Berkeley Keep Jets Over the Bay v. Bd. of Port Commissioners of the City of Oakland*, 91 Cal. App. 4th 1344, 1358 (2001) (quoting *Sacramento Old City Assn. v. City Council*, 229 Cal.App.3d 1011, 1023 (1991)); see also 1 Kostka, Stephen L. et al., *Practice Under the California Environmental Quality Act* § 12.17 (2002) (“If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake.”).

Had this project contained an accurate description, including that more than 4000 trees had already been, or would soon be, felled on the coast, with hundreds of trees disposed of by pushing them over the cliff, where they will plow through seacliff buckwheat, careen down the cliff face to the beach and marine sanctuary below, no person at any time under any condition would receive such a permit—much less one on a mitigated negative declaration. Here, however, the County unanimously approved the mitigated negative declaration for only one apparent reason—the project applicant was State Parks.

 CALIFORNIA COASTAL COMMISSION	Appeal Contentions	EXHIBIT 5 (page 1 of 5)
		JPBSP Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a

As for the mitigated negative declaration, the evidence demonstrates that the project already had, and will continue to have, a significant effect on the environment. Mr. John Gilchrist, an environmental consultant and licensed erosion control specialist, prepared several reports identifying the problems with the project, the planning, and the County's handling of the matter "after-the-fact." To summarize:

- Two environmentally sensitive plant communities, five sensitive plant species, three sensitive butterfly species, a riparian corridor, and potential bird species of special concern are present in the park. (5/15/03 Moss Biological Assessment at 6.)
- The Smith's blue butterfly is listed as a federal endangered species by the US Fish and Wildlife Service. The species "is only found in association with seacliff buckwheat (*Eriogonum parvifolium*) in a range that extends from Carmel Highlands to northern San Luis Obispo County." (2/28/03 John Gilchrist & Associates Summary Report to John Briscoe at 2.) To date, there still has been no survey of individual seacliff buckwheat plants for evidence of any endangered Smiths' blue butterfly live phases. Mr. Gilchrist reported that "seacliff buckwheat is present in the existing and proposed tree removal areas" and provides photographs that show "a mature buckwheat plant . . . approximately 50' from the tree removal location" as well as other buckwheat plants "found near the walk-in campground west of the more southerly tree removal location." (4/7/04 Response by John Gilchrist & Associates at 1, Photos 1, 2, & 3.) Mr. Gilchrist also reported that "[t]wo other mature buckwheat plants were identified with binoculars within the eucalyptus debris on the north facing slope below the Waterfall House" and that "buckwheat plants and other native vegetation were severely impacted or eliminated entirely in downslope areas." *Id.* at 1-2. Furthermore, "[t]he buckwheat in photographs 1, 2 & 3, as well as those specimens observed within the tree debris, are mature, robust plants with numerous flower heads that therefore can be expected to provide food and life support for Smith's blue butterfly." *Id.* at 2. In accord, Entomological Consulting Services (working for State Parks) acknowledged that, even though no Smith's blue butterflies were observed in association with the buckwheat at the site, "small numbers of the butterfly may utilize these plants." (11/11/03 Entomological Consulting Services Letter to Tom Moss at 7.);
- The United States Fish and Wildlife Service was not consulted about the possible presence of a federally-listed endangered species or the eradication of its protected habitat;
- Review of the trees for roosting sites of monarch butterflies (a state listed sensitive species) was inadequate, or not done at all. Monterey County has designated Monarch overwintering sites as Environmentally Sensitive Habitat Areas ("ESHA"), which by law are defined as "either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Cal. Pub. Res. Code § 30107.5. As for this project, the limited Monarch surveys that were done "occurred at a time of year when the Monarch butterfly is not overwintering" and after many of the potential roosting trees had already been removed. (11/11/03 Entomological Consulting Services Letter to Tom Moss at 1-2.) The tree cutting

began notwithstanding that “[t]he Monarch butterfly’s use of Julia Pfeiffer Burns State Park as an overwintering site has previously been documented by several biologists during the past 20 years.” *Id.* at 8.;

- Raptor nest surveys were not performed before trees were cut, and the work buffer imposed by the County is inadequate;
- No analysis of the impacts to the intertidal and near shore zones has been done, even though trees have been observed in those areas and it is highly likely that additional trees will reach those areas. Mr. Gilchrist identified “that plant toxins given off by eucalyptus foliage could adversely affect beach and intertidal organisms” and that “[s]ediment from downslope movement of logs and erosion of the steep cliff has and will continue to affect water quality in localized areas and can have adverse effects upon intertidal organisms.” (2/28/03 John Gilchrist & Associates Summary Report to John Briscoe at 4.);
- The proposed monitoring imposes standards and measurements that are “only qualitative” and are to be “done by estimation only” by State Parks;
- There has been no study of the impacts and damage to the plants on the slope, of the damage to inter-tidal organisms, or of the erosion impacts from the massive logs. Mr. Gilchrist noted in his 2/28/03 Report that the Big Sur intertidal zone supports a broad range of plants and animals, including “polychaetes, beach worms and other benthos organisms, limpets, periwinkles, rock snails, barnacles, California mussel, shore and rock crabs, sea stars, anemones, urchins, jellies and sponges.” (2/28/03 John Gilchrist & Associates Summary Report to John Briscoe at 3-4.);
- Removing large eucalyptus logs and other non-native debris from the cliff walls is a serious impact that has not been adequately addressed and is not mitigated;
- Mr. Gilchrist determined based upon “site visits and photographs that soil erosion has occurred in the eucalyptus debris zones caused both by tree falling and downslope movement of logs and debris.” (2/28/03 John Gilchrist & Associates Summary Report to John Briscoe at 1.) The Monterey County Erosion Control Ordinance, part of the Coastal Implementation Plan, requires detailed plans for erosion control. Such plans must include, among other things:
 - Property lines and contours of the site including finish contours to be achieved by grading, details of terrain, and area drainage; proposed construction, proposed drainage channels, and other runoff control measures.
 - Detailed plans of all surface and subsurface drainage devices, dams, and other erosion control measures to be constructed with, or as a part of, the proposed work. All measures required under the County erosion control chapter shall be shown. Function of erosion control measures shall be consistent with the provisions of that chapter.
 - Delineation of areas to be cleared during development activities.

- Revegetation proposal for all surfaces exposed or expected to be exposed during development activities, including cut and fill slopes.
- The plan must also normally contain the runoff controls specified in the county ordinance.

Monterey County Ord. §§ 16.12.060 and 16.12.070.

- Mr. Gilchrist reported that the eucalyptus and acacia logs and vegetative debris appeared “to have removed all understory vegetation in these areas.” *Id.* Moreover, the evidence demonstrates that debris “piled 2 to 3 feet high in some areas (Photo 4), will take decades to break down, effectively preventing either manual revegetation or natural re-colonization of native plant species over extensive areas of the site.” (4/7/04 Response by John Gilchrist & Associates at 3.)
- The County ignored the need for more mitigation measures or the existence of significant unmitigable impacts;
- The submitted reports do not have the information normally required for non-government projects, such as the qualifications of the investigators, the dates of surveys, and the background information of species of concern;
- Removal of existing seacliff buckwheat that may contain any of the life stages of the Smith’s blue butterfly, including larvae or pupae, is a significant unavoidable impact—and a violation of the federal Endangered Species Act;
- The planting of new seacliff buckwheat (proposed as mitigation) takes years to mature into a butterfly host plant;
- The County has understated the slope vegetation impacts and has not required any detailed revegetation plans that would normally include methods, species types, numbers, spacing, monitoring and maintenance, and performance expectations.
- According to Part 3 of the Monterey County Coastal Implementation Plan, all biological surveys must “be prepared by a qualified biologist, as selected from the County’s list of Consulting Biologists.” (§ 20.145.040(A)(3)). In this instance, State Parks had one of its own staff members, who is not on the County approved list of Foresters, Arborists, Biological Consultants, or Landscape Consultants, prepare the biological survey, the forest maintenance plan, the resource management plan and the erosion control plan for the project.
- Mr. Gilchrist observed that the Biological Assessment prepared by State Parks indicates 24 strongly suspected or confirmed sensitive animal species at Julia Pfeiffer Burns State Park, though 20 of the 24 species receive no discussion by State Parks. (4/7/04 Response by John Gilchrist & Associates at 3.) “In addition, there is no discussion of listed and unlisted shorebird and marine species that could be impacted by logs on the beach or within the 1400-acre Underwater Park.” *Id.*
- Section 20.145.150 of the Monterey County Coastal Implementation Plan states that “[c]are must be taken that . . . the beauty of the coast, its tranquility and the health of its environment are not marred by public overuse or carelessness.” The Section also requires project analysis of “environmentally sensitive habitats,”

“wildlife,” and “area vegetation.” Much of the work for this project was performed before any analysis had been conducted, and the proper analysis still has not been conducted.

- The Big Sur Coast Land Use Plan explains that “[t]he County’s basic policy is to take a strong and active role in the stewardship and safeguarding of Big Sur’s irreplaceable natural resources.” (Pg. 10.) Moreover, “[a]ll proposed uses, whether public or private, must meet the same exacting environmental standards and must not degrade the Big Sur landscape.” (Pg. 11.) This project has not met the same exacting environmental standards that other private applicants would be subjected to if they proposed the same work.

And the above is just a sampling of the problems.

With regard to mitigation, the measures included in the project do not reduce its effects “to a point where *clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.*” Tit. 14 Cal. Code Regs. § 15064(f)(2) (emphasis added). Significant effects have already occurred. And they have not been properly studied, remediated, or even addressed, much less mitigated.

In order to adopt a mitigated negative declaration, the project, with modifications, must avoid or mitigate significant effects to the environment “to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” Title 14 Cal. Code Regs. § 15064(f)(2). If, however, the record supports a “fair argument” that a project may have a significant effect on the environment, then an Environmental Impact Report (“EIR”) must be prepared. Cal. Pub. Res. Code §§ 21100 & 21151; *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 6 Cal.4th 1112 (1993). That requirement exists “regardless of whether the overall effect of the project is adverse or beneficial.” Title 14 Cal. Code Regs. § 15063(b)(1). Here, it is impossible to maintain that “clearly no significant effect on the environment” has occurred or will occur. The photographs alone of the work that occurred without a permit demonstrate otherwise.

Therefore, this appeal is brought on the ground that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in the Coastal Act. All possible appeals to local appellate bodies have been made and have been exhausted. Appellants request that the California Coastal Commission change the conditions of approval to include enforcement against the responsible actors, to impose the same fees and fines that would be imposed on a private property owner, to require full and complete restoration before any further work proceeds, and to require the proper environmental planning and review in advance of any further work.

The Commission now has the choice whether to perpetuate the fallacy that this “removal” project—cutting down over 4,000 trees on the Big Sur coastal cliffs and sending them plowing down the cliff walls through endangered species habitat to the shores of the Pacific—“clearly” will have no significant effect on the environment. This project sets an important precedent for future coastal projects.

**WATERFALL HOUSE LANDSCAPE MAINTENANCE PROJECT
EXOTIC (NON-NATIVE) TREE AND SHRUB REMOVAL
STATUS REPORT (March 16, 2005)**

Work Completed in Areas 1-6 (Phase 1)

<u>Species</u>	<u>Size Classes</u>		Historic/LCP Trees (Not Cut)
	<12" (Cut)	12-23.9" (Cut)	
Acacia spp.	92	16 (>18")	0
Blue gum eucalyptus	349	93	10
Monterey cypress	28	3 (12-15.9")	24 (>16')
Monterey pine	19	0	11
Victoria box	1,880	28	41
Canary Island Palm	0	0	8
Magnolia	0	0	<u>2 (8-11.9")</u>
	<u>2,368</u>	<u>140</u>	<u>96</u>

Total Cut: 2,508

Total Retained: 96

(Does not include various native trees and shrubs, all of which will be retained)

Work Proposed in Areas 1 and 7-9 (Phase 2)

<u>Species</u>	<u>Size Classes</u>		Historic/LCP Trees (Not Cut)
	<12" (Cut)	12-23.9" (Cut)	
Acacia spp.	299	22 (12-17.5")	10 (>18")
Blue gum eucalyptus	375	89	32
Monterey cypress	76	12 (12-15.9")	74 (>16')
Monterey pine	38	0	27
Victoria box	94	0	0
	<u>882</u>	<u>123</u>	<u>143</u>

Total Cut (Proposed): 1,005

Total Retained (Proposed): 143

(Does not include various native trees and shrubs, all of which will be retained)

 CALIFORNIA COASTAL COMMISSION	Project Status Report (dated March 16, 2005)	EXHIBIT 6 (page 1 of 2)
		JPBS Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a

TOTAL TREES AND SHRUBS CUT/RETAINED ALL AREAS (1-9)

<u>Species</u>	<u>Size Classes</u>		Historic/LCP Trees (Not Cut)
	<12" (Cut)	12-23.9" (Cut)	
Acacia spp.	391	38 (12-17.5")	10 (>18")
Blue gum eucalyptus	724	182	42
Monterey cypress	104	15 (12-15.9")	98 (>16')
Monterey pine	57	0	38
Victoria box	1,974	28	41
Canary Island Palm	0	0	8
Magnolia	<u>0</u>	<u>0</u>	<u>2 (8-11.9")</u>
	3,250	263	239

Total Cut: 3,513

Total Retained: 239

(Does not include various native trees and shrubs, all of which will be retained)

 CALIFORNIA COASTAL COMMISSION	Project Status Report (dated March 16, 2005)	EXHIBIT 6 (page 2 of 2)
		JP BSP Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a



McWay Cove

 CALIFORNIA COASTAL COMMISSION	Aerial Photo of Site	EXHIBIT 7
		JPBSP Waterfall House Landscape Maintenance Project A-3-MCO-04-064 Item: Th10a



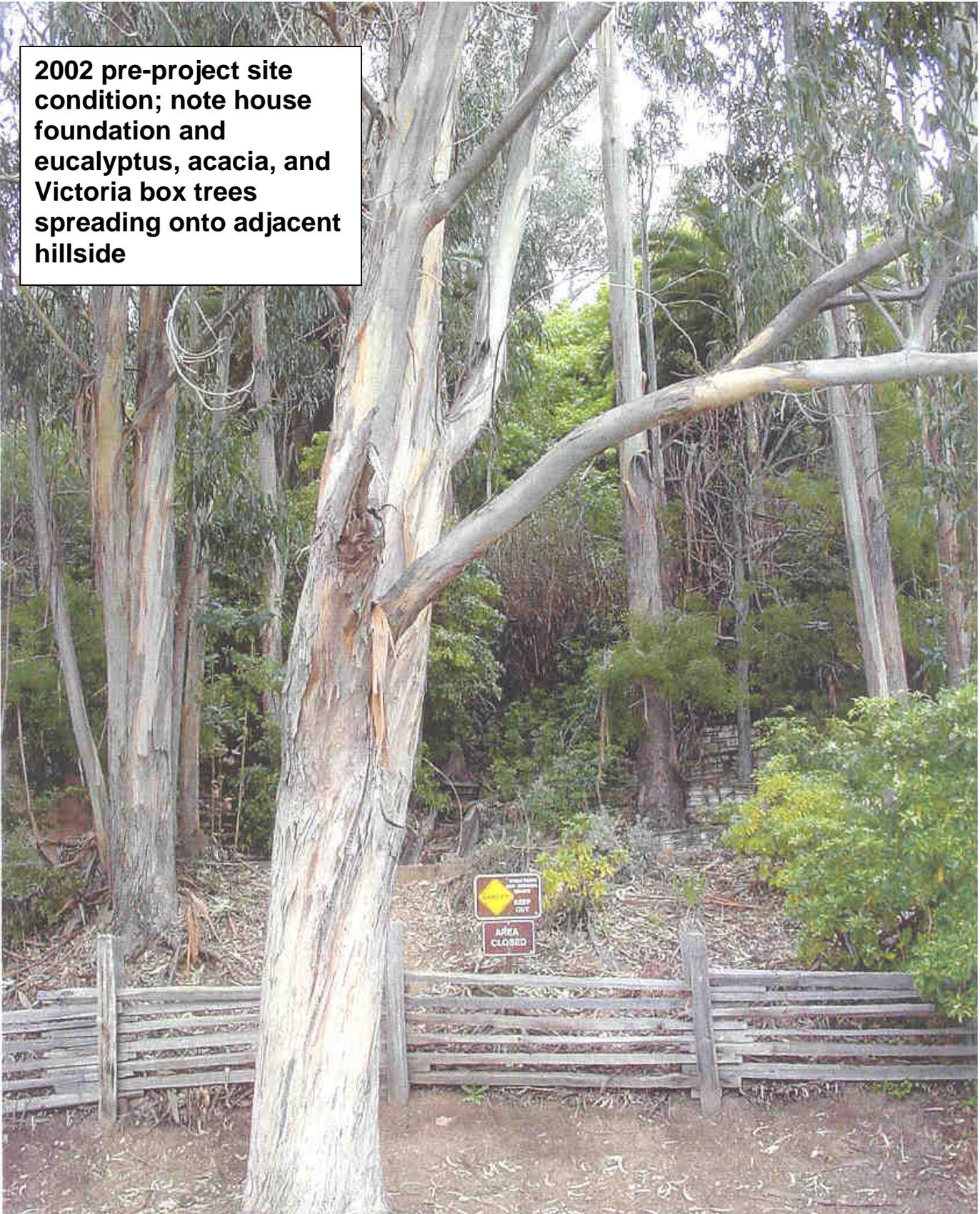
CALIFORNIA COASTAL COMMISSION

Applicant photo of felled
trees on slopes above
McWay Cove (April 2006)

EXHIBIT
8

JPBSP Waterfall House
Landscape Maintenance Project
A-3-MCO-04-064
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2002 pre-project site condition; note house foundation and eucalyptus, acacia, and Victoria box trees spreading onto adjacent hillside



CALIFORNIA COASTAL COMMISSION

**Applicant photo of
Waterfall House site**

**EXHIBIT 9
(page 1 of 3)**

**JPBSP Waterfall House
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Following removal of non-native, non-historic vegetation, the area was replanted with native plant species.



Applicant photo of Waterfall House site

EXHIBIT 9
(page 2 of 3)
JPBSP Waterfall House
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2004 photo of site; native plants have filled in where exotic vegetation was removed



CALIFORNIA COASTAL COMMISSION

Applicant photo of Waterfall House site

**EXHIBIT 9
(page 3 of 3)**

**JPBSP Waterfall House
Landscape Maintenance Project
A-3-MCO-04-064
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Photo 1: view south from Overlook Trail towards McWay Falls (prior to non-native vegetation removal)



CALIFORNIA COASTAL COMMISSION

Applicant photos of view
of McWay Falls from
Overlook Trail

EXHIBIT 10
(page 1 of 2)

JPBSP Waterfall House
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Photo 2: view south from Overlook Trail towards McWay Falls (after non-native vegetation removal); note felled trees on slope



CALIFORNIA COASTAL COMMISSION

Applicant photos of view
of McWay Falls from
Overlook Trail

EXHIBIT 10
(page 2 of 2)

JPBSP Waterfall House
Landscape Maintenance Project
A-3-MCO-04-064
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